TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~304~~ 51.

ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN AND JESSIE OWEN CUGLE.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 17, 1905.

(19,806.)

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INDEX.

	Page.
Caption	1
Transcript from supreme court of the District of Columbia	1
Caption	1
Amended bill	1
Exhibit R. C. No. 2—Decree in equity cause No. 21996	9
Answer of American National Bank	11
Answer of Ann E. J. Cruit	12
Affidavit of Evanina F. Mackall	22
Answer of E. F. Mackall	22
Testimony on behalf of complainant	23
Testimony of Kate Dean Owen	23
Chapin Brown	26
Testimony on behalf of defendants	27
Testimony of Notley Anderson	27
Lisle S. Lipscomb	29
Harry L. Rust	31
William H. Saunders	33
Ann E. J. Cruit	36
Thomas W. Widdicombe	39
Benjamin S. Minor	45

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	Page.
Stipulation of counsel	48
Decree	48
Appeal and order for citation	51
Citation	52
Consent of American National Bank to allowance of severance	52
Severance allowed	53
Memorandum: Appeal bond filed	53
Directions of counsel for preparation of transcript	53
Clerk's certificate	54
Minute entries of argument	55
Opinion	55
Decree	61
Order allowing appeal	61
Bond on appeal	61
Citation and service	62
Clerk's certificate	63

the Court of Appeals of the District of Columbia.

ANN E. J. CRUIT Appellant,
vs.
KATE DEAN OWEN ET AL. } No. 1506.

Supreme Court of the District of Columbia.

E DEAN OWEN and JESSIE OWEN Cugle, Complainants,
vs.
E. J. CRUIT, EVANIA F. MACKALL, d American National Bank, Defendts. } No. 23948. In Equity.

ED STATES OF AMERICA, *District of Columbia,* } *ss:*

it remembered, that in the supreme court of the District of mbia, at the city of Washington, in said District, at the times nafter mentioned, the following papers were filed and proceedhad, in the above-entitled cause, to wit:—

Amended Bill.

Filed December 31, 1903.

In the Supreme Court of the District of Columbia.

E DEAN OWEN and JESSIE OWEN CUGLE, Plaintiffs,
vs.
E. J. CRUIT, EVANIA F. MACKALL, d American National Bank, Defendts. } In Equity. No. 23948.

nded Bill of Complaint. Filed by Leave of the Court First Had d Obtained by Order Passed Herein the 22d Day of Decemr, 1903.

he supreme court of the District of Columbia, holding an equity urt for said District:

ie plaintiffs state as follows:

The plaintiff, Kate Dean Owen, is a resident of the District of mbia and a citizen of the United States. The plaintiff, Jessie

Owen Cugle, is a resident of Roland Park, Baltimore county, State of Maryland. The plaintiffs bring this suit in their own right.

2. The defendants, Ann E. J. Cruit and Evanina F. Mackall, are both residents of the District of Columbia and citizens of the United States and are sued in their own right. The defendant, The American National Bank, is a corporation duly incorporated under the banking laws of the United States and is a national bank located, and having an office and during a banking business in the District of Columbia and is sued as the custodian of a certain fund, the title of which, together with other property is involved in this suit and to which reference is hereinafter made and more particularly described.

2 3. Robert Cruit, late a citizen of the said District, died in the said District on the — day of November, 1861, seized and possessed in fee-simple of the following described property, to-wit: Part of original lot numbered one (1) in square numbered two hundred and twenty-four (224), in the city of Washington, District of Columbia, beginning at a point in the north line of North "F" street which is 41 feet 7 inches west of the southeast corner of the said lot and square, thence west with the line of said "F" street 20 feet to the dividing line between lots numbered one (1) and two (2), thence north with said dividing line 75 feet to the rear line of said lot numbered one (1), thence east with said rear line 20 feet, and thence south 75 feet to the beginning. Also part of original lots numbered twelve (12) and thirteen (13) in said square numbered two hundred and twenty-four (224), beginning at the distance of 52 feet 3 inches east from the northwest corner of lot numbered twelve (12), thence east 25 feet, thence south 113 feet 8 inches, thence west along the line of the alley 25 feet, thence north 113 feet 8 inches to beginning embracing within said limits, 1 foot 10 inches front of lot numbered twelve (12) and 23 feet 2 inches front of lot numbered thirteen (13). Also all of original lots numbered two (2), fourteen (14), fifteen (15), and sixteen (16) in said square numbered two hundred and twenty-four (224). All of the above described real estate is improved by brick houses, used and occupied for residence and business purposes.

4. That the said Robert Cruit left a last will and testament devising all of the above mentioned real estate (as well as a farm
3 in the State of Virginia, hereinafter mentioned and described) owned by him at the time of his death, which said last will and testament has been duly admitted to record and probate in the office of the register of wills. Said last will and testament is in words following, to wit:

"This is the last will and testament of me Robert Cruit of the city of Washington in the District of Columbia.

First I give to my two nephews Edwin Cruit the son of George, and Henry the son of John L. Cruit, the legacy of one hundred dollars, to each of them, to be paid as soon after my death as may be. And all the rest residue and remainder of my estate, real, per-

nal and mixed, whatsoever and wheresoever situated, I give de-
se and bequeath unto my dear daughter Susan Cruit her heirs
ecutors and administrators upon the following trusts to wit In
ust for my dear wife Catherine for and during her life, and to
rmit her to receive and take the whole income thereof after pay-
g taxes repairs and insurance, and to apply and dispose of such
t income as she my said wife may think proper and from and
ter her decease, in trust, as to my real estate for my dear daugh-
rs Catherine E. the wife of Samuel Owens, Ann Cruit, Louisa
uit, and herself the said Susan Cruit, equally share and share
ike, for and during their respective lives, for their own sole and
parate benefit, free from the control of the husband of my said
ughter Catherine and any husband or husbands she or my said
ier daughters or any of them may hereafter happen to marry,
d not to be liable in any way for the debts of any such husbands,
e receipts of my said daughters alone being a valid discharge
nd from and after their death in trust for the child or children of
ch of my said daughters then living in fee simple, such child or
ildren respectively to take the share to which his, her or their
rent was entitled And if any of my said daughters shall die
ithout having been married, her share shall pass to her or their
rviving sisters or sister for life equally; and upon her or their
ath the same shall vest in her or their child or children in the
me manner, and for the same estate and pass on her or their
ath, as her or their original shares or share And as to my per-
nal property, also given in trust as above expressed, I direct that
e same shall, after the death of my said wife, be divided equally
nong all my said children, Catherine, Susan, Ann and Louisa
are and share alike, and I accordingly give the same to them as
oresaid for their own sole and separate use

And lastly I appoint my said daughter Susan Cruit sole execu-
ix of this my last will and testament. And if my said daugh-
r shall die or from any cause should become unable to act in the
trust, I direct, that a trustee shall be appointed by the
circuit court so that the trusts hereby created shall be at all
times preserved and carried into effect

In testimony whereof I have hereunto set my hand and seal this
rst day of September in the year one thousand eight hundred and
fty eight.

ROBERT CRUIT. [L. S.]

Signed, sealed published and declared by the said testator Robert
ruit as and for his last will and testament in the presence of us
ho in his presence at his request and in the presence of each other
ave subscribed our names as witnesses.

S. H. HOWELL.
W. H. TENNEY.
W. REDIN."

5. That all of the above described property is now under rental and produces an income of between $11,000.00 and $12,000.00 annually, and that in addition to the above described property the said Robert Cruit died seized and possessed of property in the State of Virginia in the county of Alexandria, being a farm consisting of about two hundred acres, improved by farm houses and out-buildings, which is not at present under any specified or agreed rental, but which farm and farm houses and out-buildings, the said Ann E. J. Cruit took or assumed possession of after the death of her sister, Catherine E. Owen, one of the daughters of the said Robert Cruit, deceased, who died on the 14th day of May 1901. That all of the devisees mentioned in the last will and testament of the said Robert Cruit, deceased, with the exception of the defendant Ann E. J. Cruit, are now deceased, and all of those now deceased died unmarried and without issue, with the exception of the said Catherine, one of the daughters of the said Robert Cruit, deceased. That the said Catherine intermarried with one Evan Evans, and from said marriage there was born on May 22nd 1848, the above named defendant, Evanina F. Mackall. The said Catherine, daughter of the said Robert Cruit, after the death of her said husband, Evan Evans, intermarried with Samuel Owen, and from said marriage with the said Samuel Owen there were born on May
5 1st 1855, the plaintiff Kate Dean Owen; and on February 4th 1858, Robert Wilson Owen, but who died on March 3rd, 1858; and on February 8th, 1859, Clara Steuart Owen, but who died on April 19th, 1859; and on October 28th, 1862, the plaintiff, Jessie Owen Cugle, and who is the wife of Charles D. Cugle; and on November 1st, 1865, William Howard Owen, but who died on April 18th, 1872. That the said Catherine E. Owen, the daughter of the said Robert Cruit, died in the District of Columbia as above set forth, on the 14th day of May 1901, leaving three of the above named children, to-wit: the defendant Evanina F. Mackall, the the plaintiffs Kate Dean Owen and Jessie Owen Cugle, surviving her and none other. And all other of the said daughters of the said Robert Cruit, mentioned in his said last will and testament died without having been married, as follows: Louisa Cruit died without having been married, on the 2nd day of January 1876; the said Susan T. Cruit died without having been married, on the 31st day of December 1900, and at the death of the next two above named, their respective shares in said real estate of the said Robert Cruit passed under the provisions of said last will and testament of the said Robert Cruit, deceased, to their surviving sisters, the said Catherine, (afterwards by marriage and at the time of her death, Catherine E. Owen) and the said Ann E. J. Cruit, for their respective lives; so that, prior to the death of the said Catherine (after by marriage, and at the time of her death, Catherine E. Owen), she and the said Ann E. J. Cruit were, under the provisions of said will, entitled, share and share alike, to the whole net income of said real estate, for their respective lives. That, upon the death of the said

Catherine (afterwards, by marriage and at the time of her death, Catherine E. Owen), the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant Evanina F. Mackall, her children, became entitled to receive the one-half net income of said
6 real estate to which their said mother was entitled at the time of her death; and they are also the equitable owners of the fee simple title of all of said real estate, subject only to the right of the said defendant, Ann E. J. Cruit, to receive one-half of the net income of said real estate during her life. The said Ann E. J. Cruit, the now only surviving daughter of the said Robert Cruit, deceased, has never been married and is of the age of seventy years and upwards.

6. That notwithstanding the fact that the said plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, are now entitled, as above set forth, to one-half of the net income derived from the above mentioned property, and also entitled to the equitable fee simple title of the above described real estate, as above set forth, yet the said defendant, Ann E. J. Cruit, has collected and received and is collecting and receiving all of the rents and revenues derived therefrom since the death of the said Catherine E. Owen, and claims that she is entitled, notwithstanding the provisions of the said will of the said Robert Cruit, deceased, to all of said income from said property.

7. The plaintiffs further state, that recently, to-wit: on the 20th day of February 1903, an agreement was entered into between the said defendants Ann E. J. Cruit, under the name and style of Emily A. J. Cruit, and Evanina F. Mackall, under the name and style of Nina F. Mackall, and the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, with Benjamin S. Minor, as attorney for the defendant, The American National Bank, then organizing, by which it was agreed to lease to the said, The American National Bank, defendant herein, a portion of the above described property, to-wit: premises known as No. 610, 14th street, N. W., for the term of eight years, at the yearly rental of eighteen hundred dollars ($1,800.00), payable in monthly instalments of $150.00 per month. One-half of said monthly rental to be paid over to
7 the said defendant, Ann E. J. Cruit, under the name and style of Emily A. J. Cruit, and the other one-half of said yearly rental to be deposited each month in the American national bank as a special deposit, the same to bear interest at the rate of four per cent. (4%) per annum, and to be held by the said The American national bank as a special deposit as aforesaid, until the termination of the litigation which is to be instituted by the filing of this bill in equity for the construction of the last will and testament of the said Robert Cruit, deceased, and the determination of the rights of the parties to this suit as to the disposition of said one-half of said yearly income, all of which will more fully appear by copies of said written agreement, in two parts, signed and accepted by the parties to this suit, and marked "Exhibit R. C. No. 1," and

filed along with the original bill in equity and prayed to be read as and made a part of this amended bill.

8. The plaintiffs further state that after the death of the said Robert Cruit, the said Susan T. Cruit, mentioned in his last will and testament as Susan Cruit, entered upon her active duties as trustee, and continued to so act as such trustee up to and until her death, which occurred on the 31st day of December A. D. 1900. In the execution of these trusts, she collected the rents and income derived from the various tenants of said real estate; paid out therefrom the taxes on said real estate; kept the houses and all improvements on said real estate insured against loss by fire, and paid out of said rents and income the premiums of the several policies of insurance and all costs of insurance; all costs of repairs to said houses and improvements on said real estate; and after paying such taxes, repairs and insurance, paid over to the several beneficiaries under said last will and testament, the net income derived from said real estate; that is to say, to the said wife and widow, Catherine,
8 of the said Robert Cruit, deceased, during her life, and up to and until the death of said wife and widow, Catherine, which occurred in her eightieth (80th) year, on the 13th day of May A. D. 1876. That from and after the death of the said wife and widow, Catherine, the said Susan T. Cruit, as trustee, continued to collect the said income from said real estate, and after paying therefrom the said taxes, repairs and insurance, she, the said Susan T. Cruit, trustee, paid the net income to the several daughters then living of the said Robert Cruit, deceased, equally, share and share alike, to-wit: one-third of said net income to the said Catherine E. Owen, one-third thereof to the said Ann E. J. Cruit, defendant, and one-third thereof to herself, the said Susan T. Cruit. That after the death of the said Susan T. Cruit, trustee, to-wit: on the 17th day of January 1901, the said defendant, Ann E. J. Cruit, filed her bill in equity in this honorable court, and numbered on the equity docket in the clerk's office, 21,996, against the said Catherine E. Owen (now deceased), Evanina F. Mackall, defendant herein, Kate Dean Owen, defendant herein, and Jessie Owen Cugle, defendant herein, praying for the appointment of a trustee or trustees, to act in the management of said real estate in place of said Susan T. Cruit, trustee, deceased, and on the same day (January 17, 1901) a decree was passed by this honorable court in said last mentioned cause, settling the accounts of the said Susan T. Cruit, deceased, as trustee, and appointing the said Ann E. J. Cruit, defendant herein, and Chapin Brown, as joint trustees to manage said real estate, and by said decree it was provided as follows: "And said trustees are hereby authorized and directed to collect the income of their said trust estate as near as may be monthly and after setting aside monthly the then proportionate share and amount necessary to meet the current taxes against said estate,
9 the current monthly proportionate share of insurance, repairs, and incidental expenses, all to be paid in due course;

shall each month distribute and pay the remainder in equal shares to the complainant and the defendant Catherine E. Owen during the existence of this trust;" &c., all of which will more fully appear from a true copy of said decree, filed along with this amended bill of complaint and marked Exhibit R. C. No. 2, and prayed to be read as and made a part of this amended bill of complaint. That while the said Susan T. Cruit was acting as trustee, and also while the said Ann E. J. Cruit, defendant herein, and the said Chapin Brown were jointly acting as trustees, they entered into several written leases as such trustees with various tenants of the said real estate for terms of years, but none of said leases entered into by the said Susan T. Cruit, trustee, extends beyond the month of September 1907, and none of the leases entered into by the said Ann E. J. Cruit and Chapin Brown, trustees, extend beyond the month of March 1904.

9. Plaintiffs further state that while the rents and income now derived from said real estate amount to between $11,000.00 and $12,000.00, per annum yet in fact the said real estate should produce an income of at least $20,000.00 per annum, and that the rental value of said real estate is worth at least the said last mentioned amount, and that if a proper trustee or trustees are appointed to manage said real estate, the rents and revenues to be derived therefrom can be greatly increased. That if there be any further extended delay in obtaining a final decree in this cause, that receivers should be appointed to take charge of the above mentioned real estate and manage the same under the direction of this honorable court under the provisions of said last will and testiment of said Robert Cruit, deceased.

10 10. The plaintiffs further state that an account should be taken by or under the direction of this honorable court, by its proper officer, of rents and revenues received by the said Ann E. J. Cruit since the death of the said Catherine E. Owen, and that one-half of said rents and revenues so received by the said Ann E. J. Cruit and one-half of the rental value of said farm since the death of the said Catherine E. Owen should be turned over to the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall.

Prayers.

I. The plaintiffs therefore pray that writs of subpœna may issue out of this honorable court directed to the defendants, Ann E. J. Cruit, Evanina F. Mackall and American National Bank, requiring them to appear and answer this bill of complaint.

II. That the court may further decree the proper construction and meaning of said last will and testament, in addition to the said decree passed by this honorable court in said equity suit No. 21,996; and that the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, are, under the provisions of the

said last will of the said Robert Cruit, deceased, entitled to one-half of all the real estate of which the said Robert Cruit died seized and possessed in fee simple, and that they are entitled now and in the future to one-half of the rents and revenues derived from said real estate since the death of the said Catherine E. Owen; and that after the death of the said Ann E. J. Cruit, that they, the said plaintiffs, and the defendant, Evanina F. Mackall, are entitled in fee simple to all of the real estate belonging to the estate of the said Robert Cruit, deceased, whether mentioned and described in this bill of complaint or not.

11 III. That the said Ann E. J. Cruit may be required to state under oath the amount of rents and income she has received from said real estate and to account for one-half of the rents and revenues derived from said real estate since the death of the said Catherine E. Owen, and that the same may be paid in equal proportions to the said plaintiffs Kate Dean Owen and Jessie Owen Cugle and the defendant Evanina F. Mackall.

IV. That a trustee or trustees may be appointed to take charge of and manage the above mentioned real estate and carry out the provisions contained in the last will and testament of the said Robert Cruit, deceased.

V. That in case of delay in the appointment of a trustee or trustees, that a receiver or receivers may be appointed to take charge of and manage the said real estate and carry out the provisions of the last will and testament of the said Robert Cruit, deceased, under the direction of this honorable court.

VI. That the said defendant, Ann E. J. Cruit, may be restrained and enjoined from longer collecting and receiving the rents and revenues from said property or from managing and controlling the same to the exclusion of the plaintiffs and the defendant, Evanina F. Mackall, who are equally at present entitled with the said Ann E. J. Cruit, to one-half of the said rents and revenues.

VII. That an account may be stated by this honorable court or under its direction, by its proper officer or officers, of all the rents and revenues received by the said Ann E. J. Cruit from said real estate since the death of the said Catherine E. Owen, and that in said account she may be charged with one-half of the rental value of the property in the State of Virginia since the death of the said Catherine E. Owen.

12 VIII. That The American National Bank, defendant, may be decreed to pay to the plaintiffs and the defendant, Evanina F. Mackall, the several sums of money deposited with them as one half of the monthly rent of the said premises occupied by said defendant bank.

IX. That the plaintiffs may have such other and further relief as the nature of their case may require.

KATE DEAN OWEN.
JESSIE OWEN CUGLE.

CHAPIN BROWN,
Sol'r for Compl'ts.

DISTRICT OF COLUMBIA, *ss:*

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true and those stated upon information and belief I believe to be true.

KATE DEAN OWEN.

Subscribed and sworn to before me this 31st day of December, A. D. 1903.

[SEAL.] CHAS. H. BAUMAN,
Notary Public, D. C.

CITY OF BALTIMORE, *State of Maryland,* } *ss:*

I do solemnly swear that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true and those stated upon information and belief I believe to be true.

JESSIE OWEN CUGLE.

Subscribed and sworn to before me this 31 day of December, A. D. 1903.

[SEAL.] CHAS. L. HUTCHINS,
Notary Public.

13 EXHIBIT R. C. No. 2.

In the Supreme Court of the District of Columbia, Holding a Special Term as an Equity Court.

ANN E. J. CRUIT, Complainant,
against
CATHERINE E. OWEN, EVANINA F. MACKALL, Kate Dean Owen, and Jessie Owen Cugle, Defendants. } Equity. No. 21996.

Decree.

This cause came on to be heard on the bill and answers of all the defendants and was submitted to the court.

Thereupon, upon consideration thereof, it is by this court and the authority thereof, this 17th day of January 1901, adjudged, ordered and decreed that for and during the joint lives only of the complainant and the defendant Catherine E. Owen, the complainant Ann E. J. Cruit and Chapin Brown be, and they hereby are, appointed trustees under the will of Robert Cruit, deceased, dated the

first day of September, 1858, and set out in the bill in this cause; and further that said trustees be, and they are, hereby required to give either their joint bond, their joint and several bond, or their several bonds, with or without surety as the court may approve to the United States of America, in the penalty of five thousand ($5000.) dollars, conditioned for the due execution of said trust and for the safety of those interested in said trust.

And it is further adjudged, ordered and decreed that the estate of the trustee Susan Cruit to the time of her death be, and the same is, hereby absolved from any accounting to the said trustees and any of the parties interested herein, excepting only as to the sum of fifteen hundred and ninety six and 83/100 ($1596.83) dollars now on deposit in her name in the National Metropolitan bank,
14 which said sum the said trustees are hereby authorized to collect from the personal representative of the estate of said Susan Cruit and when collected shall apply the same towards the payment of the taxes accruing on the real estate of the said Robert Cruit, deceased.

And the said trustees are hereby authorized and directed to collect the income of their said trust estate as near as may be monthly and after setting aside monthly the then proportionate share and amount necessary to meet the current taxes against said estate, the current monthly proportionate share of insurance, repairs, and incidental expenses, all to be paid in due course; shall each month distribute and pay the remainder in equal shares to the complainant and the defendant Catherine E. Owen during the existence of this trust; but the complainant shall at her pleasure during her natural life remain in the sole undisturbed possession of premises No. 1409, F street, N. W., in the city of Washington, District of Columbia, where she now resides, paying for the use and occupation thereof from the death of the said Susan Cruit at the rate of thirty seven 50/100 ($37.50) dollars monthly to the trustees hereby appointed for the sole use of the defendant, Catherine E. Owen, so long as said Catherine lives and said occupation of said complainant continues; the said $37.50 being at the rate of $75.00 per month, the rental value thereof, the other one half share belonging to complainant.

And it is further adjudged, ordered and decreed that complainant recover the costs of this suit to be taxed up by the clerk from the said estate and the said trustees hereby appointed are hereby authorized and directed to pay said costs to complainant.

JOB BARNARD, *Justice.*

15 Copy.

Answer of American National Bank.

Filed January 12, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN and JESSIE OWEN CUGLE, Plaintiffs,
vs.
ANN E. J. CRUIT, EVANI-A F. MACKALL, and American National Bank, Defendants.
} In Equity. No. 23948.

Separate Answer of the American National Bank of Washington.

This respondent, in answer to the amended bill of complaint filed in the above entitled cause against it and others, or to so much thereof as it is advised that it is material and necessary to make answer unto, answering says:

1 & 2. This respondent admits as true the first and second paragraphs of said amended bill.

3. In answer to the third paragraph of said amended bill this respondent says that it is not informed as to the matters and things therein alleged and can neither admit nor deny the same, but requires strict proof if the same are deemed material.

4. In answer to the fourth paragraph of said bill this respondent, on information and belief, admits the allegations therein contained; and also admits that said fourth paragraph contains a copy of the last will and testament of said Robert Cruit.

5 & 6. This respondent in answer to the 5th and sixth paragraphs of said amended bill says it is not informed as to the matters
16 and things therein contained and can neither admit nor deny the same, but requires strict proof thereof if the same are deemed material.

7. This respondent admits as true the allegations contained in the seventh paragraph of said amended bill as to the entering into of the contract with it and the other parties to this suit, upon the terms and conditions therein stated.

This respondent further answering said seventh paragraph of said amended bill, says that it has complied with all the conditions imposed upon it as set forth in said agreement, copies of which are filed as exhibits to said amended bill, and that it is now and has been for sometime in possession of said premises; that the said defendant, Ann E. J. Cruit, under the name and style of Emily A. J. Cruit, has, in pursuance of said agreement executed a lease with this said respondent upon the terms and conditions set forth in said contract.

8, 9 & 10. This respondent in answer to the eighth, ninth and tenth paragraphs of said bill says it is not informed as to the matters and things therein stated and can neither admit nor deny the same, but requires strict proof thereof if the same are deemed material.

And now having fully answered this respondent prays to be hence dismissed with reasonable costs on its behalf expended.

THE AMERICAN NATIONAL BANK
OF WASHINGTON,
By ROBERT N. HARPER, *President.*

BERRY & MINOR, *Solicitors.*

DISTRICT OF COLUMBIA, *To wit:*

Robert N. Harper, being first duly sworn according to law deposes and upon oath says that he is the president of The American
17 National Bank of Washington, the respondent who has signed the foregoing answer, and says that he has read the said answer by the American National Bank of Washington subscribed, and knows the contents thereof; that the matters and things therein stated upon personal knowledge are true, and those stated upon information and belief *it* believes to be true.

ROBERT N. HARPER.

Subscribed and sworn before me this 11th day of January, A. D. 1904.

[SEAL.] WILLIAM SELBY,
Notary Public.

[Endorsed:] Equity No. —. Kate Dean Owen *et al. vs.* Ann E. J. Cruit *et al.* Answer of the American National Bank of Washington. Copy for E. H. Thomas, Esq.

18 *Answer of Ann E. J. Cruit.*

Filed January 29, 1903.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN and JESS-E OWEN CUGLE, Plaintiffs,
vs.
ANN E. J. CRUIT, EVANINA F. MACKALL, and American National Bank, Defendants.
} Equity. No. 23948.

Answer of Ann E. J. Cruit to the Amended Bill of Complaint.

This defendant now and at all times hereafter, objecting and excepting to the jurisdiction of this honorable court respecting any

other matter or thing for which relief is asked by the complainants, save and excepting only the proper construction of said will and the disposition of the rents on special deposit, with the American national bank, answering said bill says:—

1, 2 & 3. This defendant admits the allegations of fact set forth in the 1st, 2nd and 3rd paragraphs of the said amended bill.

4. Answering the 4th paragraph of said amended bill, this defendant says that said Robert Cruit, her father, made his last will and testament dated the 1st day of September, 1858, but she says that said will and testament were admitted to probate and record by the orphans' court of the District of Columbia on the — day of December, 1861, and not thereafter. This defendant prefers that every construction of said will be had by reference to the original will and refers thereto for greater certainty and particularity respecting its terms, conditions and provisions and the effect thereof.

5. This defendant says that the property situate in the Dis-
19 trict of Columbia yielded for the year 1903, $10,989, a gross annual rental, and will yield, so this defendant believes, when all rents are collected, annually that sum in gross. The improvements on said property have been standing for many years and the same is now rented for the highest rents obtainable. When the said Robert Cruit died the gross income of the same did not amount to $3000 annually, but by the care, attention given and the improvements made thereon by this defendant and her deceased sister, Susan T. Cruit, the rentals have increased as aforesaid.

The said farm in the State of Virginia comprises about two hundred and six (206) acres improved, less five or six acres taken off for roads, subject to annual taxes of $384.58, and other expenses, amounting to about $650.

This defendant further answering says that by agreement made after the death of Susan T. Cruit, on behalf of the said Catherine E. Owen in her lifetime, and the said complainants Kate Dean Owen and Jess-e Owen Cugle and the defendant Evanina F. Mackall, with this defendant, this defendant was to remain in sole charge and custody of said farm accounting to her sister Catherine E. Owen for the produce thereof as was formerly done in the lifetime of said Susan T. Cruit.

This defendant and the said Catherine E. Owen, accordingly, during her lifetime divided the net produce left between them and since the death of said Catherine, this defendant continued the same practice with the complainant Kate Dean Owen until some time ago she refused to receive the same, but this defendant has never excluded any of them, said complainants and said defendant Evanina F. Mackall from said farm and the same has never been a source of profit to this defendant nor has any demand been made upon her to rent or let the farm. It is true that all the dev-
20 isees named specifically in said last will and testament with the exception of this defendant, and that all of those now de-

ceased died unmarried and without issue, with the exception of said Catherine, one of the daughters of the said Robert Cruit, deceased.

This defendant admits the births and the marriages of the children of said Catherine Owen as alleged, and the deaths of those alleged to be deceased; that said Catherine E. Owen died as alleged leaving the three children, parties to this suit as alleged; that all of the other of said daughters of said Robert Cruit mentioned in said will, died without having been married as alleged. This defendant is now — years of age and has never been married. This defendant does not admit the conclusions of law stated in said paragraph respecting the devolution of title to said real estate and the rights alleged respecting the income thereof.

6. Answering the 6th paragraph of said amended bill this defendant says that so soon as she was advised that the complainants claimed that under proper construction of the said will of Robert Cruit her father, they and the defendant Evanina F. Mackall were entitled to one-half of the net income of said property, this defendant segregated one-half thereof and has kept the same to await the judicial interpretation of said will and always has, since said property has been in her charge, kept the same insured and in good order, repair, paid the taxes and faithfully and diligently collected the rents thereof and by her conduct of the said estate, has conserved and benefitted it. This defendant further says that since the death of the said Catherine E. Owen, the taxes on said real estate have been increased and that she has required an increase of rents to meet the same from the tenants, which most of them have
21 paid. This defendant does not claim, notwithstanding the provisions of said will of the said Robert Cruit, she is entitled to all of said net income from said property, but she does claim the same during her lifetime under and by virtue of said will, and she denies every conclusion of law to the contrary asserted in the said amended bill.

7. This defendant admits the execution of the agreement made on or about the 20th day of February, 1903, between this defendant, said Evannia F. Mackall, the plaintiffs and the defendant The American National Bank and says that said bank has retained and still retains one-half of said yearly rental as a special deposit.

8. This defendant admits that after the death of said Robert Cruit, the said Susan T. Cruit entered upon her duties as trustee, but she denies that said Susan T. Cruit continued so to act up to and until her death. Whether said Susan T. Cruit continued to receive and disburse the income of said estate as trustee under said will after the death of their mother Catherine Cruit, is, this defendant is advised, a question of law, which is incorrectly set forth and asserted in said amended bill so this defendant is advised. There was no contract or agreement with or without consideration by which said Susan T. Cruit as trustee under said will collected and disbursed said income after the death of their mother Catherine Cruit. On the contrary this respondent says that the duties of said Susan T. Cruit were

ose of agent for her sisters when they became possessed of their ght to the income of said estate. This defendant is also advised at however the parties may have regarded the said Susan T. Cruit ter the death of said Catherine Cruit, that such action on their rt is of no importance and of no legal effect upon the proper construction of said will and she therefore excepts and objects to said paragraph as though she had formally demurred thereto.

Answering so much of said paragraph which refers to events bsequent to the death of Susan T. Cruit, this defendant says: That mediately upon the death of said Susan T. Cruit and during the fetime of said Catherine E. Owen, the plaintiffs in this cause prented to this defendant a draft of a power of attorney purporting to ppoint this defendant and Chapin Brown trustees, in the place of id Susan T. Cruit under said will, which this defendant declined to xecute. The said form of power of attorney reads as follows:

"Know all men by these presents, that we, Catherine E. Owen nd Ann E. J. Cruit (named in the annexed last will and testament f Robert Cruit, deceased, as Ann Cruit) as the only surviving ildren of the said Robert Cruit, late of the District of Columbia, eceased, and Evanina F. Mackall, Kate Dean Owen and Jess-e wen Cugle, as the only children of the said Catherine E. Owen, ave constituted, made and ordained, and do hereby constitute, make nd ordain the said Ann E. J. Cruit and also Chapin Brown as trusees in place of Susan Cruit (the trustee and executrix named in the id annexed last will and testament of Robert Cruit, deceased), the id Susan Cruit having departed this life on the 31st day of Deember A. D. 1900; giving and granting to said trustees now appointed all the powers and authority that were given to the said usan Cruit, now deceased, under and by the last will and testaent of Robert Cruit, late of the District of Columbia, deceased; id last will and testament of the said Robert Cruit being dated the rst day of September A. D. 1858, and duly recorded in the office of e register of wills of the District of Columbia, in Will Book No. 9, . K. at pages 18, *et seq.*, and a true copy thereof being hereto attached and made a part hereof.

And we hereby give, grant and convey to the said Ann Cruit and the said Chapin Brown all power and authority manage and control all of the property, both real and personal, elonging to the estate of the said Robert Cruit, deceased, with uthority and power to rent, let or lease the property belonging to id estate, either for term of years or otherwise, to keep the same sured from loss by fire, to make all necessary repairs and to do l things necessary to protect and preserve said estate, be the same tuated in the District of Columbia, in the State of Virginia or sewhere, and with full power to collect the rents and revenues rising therefrom, and receipt for the same, and after paying all roper expenses, commissions, taxes, insurance and repairs, to pay nd distribute the net balance monthly to the parties entitled ereto. It being understood between all the parties hereto that

the said Catherine E. Owen and the said Ann E. J. Cruit are the only persons now entitled to receive the rents and revenues arising from the property belonging to the said estate of the said Robert Cruit. And that the said Catherine E. Owen and the said Ann E. J. Cruit are entitled to receive the said rents and revenues arising therefrom during their lives under the provisions of the said last will and testament of the said Robert Cruit, deceased. The said trustees in all matters relating to the said estate shall act jointly. They shall each give bond in the amount (the penalty thereof) to be fixed by —— —— and the said bond or bonds shall be approved by —— —— but the giving of said bond or bonds shall not prevent the trustees now appointed from immediately acting under this power of attorney in all matters requiring prompt action in their judgment. The said trustees shall render full accounts."

24 The plaintiffs then threatened to institute proceedings for a receiver and to take away every control of this defendant over said property and finally as a compromise without consideration of the construction of the said will respecting events to happen beyond the lifetime of said Catherine E. Owen, it was agreed that this defendant file said bill, and inasmuch as it was unjustly claimed and represented by complainants that her sister Susan T. Cruit was indebted to said Catherine E. Owen and had not properly accounted for said income and that it was necessary that the same should be settled, while in fact the said Catherine E. Owen owed to defendant one-half of the sum of $930, which she had overdrawn from said income, the said bill was drawn and filed after mutual consultation of counsel for both parties, and said decree by agreement was passed to avoid litigation and an application for a receiver.

Said decree accordingly, because of the said agreement of the parties, and the desire of this defendant to avoid litigation provided that the estate of said Susan T. Cruit be absolved from any accounting to the parties interested excepting as to the sum of $1596.83 then on deposit in bank in her name, and which had been so placed by her for the purpose of paying taxes, and which sum was received and the same was applied to said taxes. The said decree, as part of said agreement, also provided, (and is now in full force respecting the same as against the devisees under the will of Robert Cruit) that this defendant shall at her pleasure, during her natural life remain in the sole undisturbed possession of premises No. 1409 F street N. W. in the city of Washington, where she now resides, paying for the use and occupation there from the death of the said Susan T. Cruit, at the rate of $37.50 monthly. The said bill was not intended as a bill for the construction of said will nor was the question

25 of its construction or the merits of this cause, now raised, considered by the parties or passed upon by the court.

This defendant further says that she paid the said rental of $37.50 in full during the whole of the lifetime of Catherine E. Owen, and she is entitled in any event by said decree, now shown the court, and which reads as follows:—

"This cause came on to be heard on the bill and answers of all the defendants and was submitted to the court.

Thereupon, upon consideration thereof, it is by this court and the authority thereof, this 17th day of January, 1901, adjudged, ordered and decreed that for and during the joint lives only of the complainant and the defendant Catherine E. Owen, the complainant Ann E. J. Cruit and Chapin Brown, be, and they hereby are, appointed trustees under the will of Robert Cruit, deceased, dated the first day of September, 1858, and set out in the bill in this cause; and further that said trustees be, and they are, hereby required to give either their joint bond, their joint and several bond, or their several bonds, with or without surety as the court may approve to the United States of America, in the penalty of five thousand ($5000) dollars, conditioned for the due execution of said trust and for the safety of those interested in said trust.

And it is further adjudged, ordered and decreed that the estate of the trustee Susan Cruit to the time of her death be, and the same is, hereby absolved from any accounting to the said trustees and any of the parties interested therein, excepting only as to the sum of fifteen hundred and ninety six and 83/100 ($1596.83) dollars now on deposit in her name in the National Metropolitan bank, which said sum the said trustees are hereby authorized to collect from the personal representative of the estate of said Susan Cruit, and when collected, shall apply the same towards the payment of the taxes accruing on the real estate of the said Robert Cruit, deceased.

And the said trustees are hereby authorized and directed to collect the income of their said trust estate as near as may be monthly, and after setting aside monthly the then proportionate share and amount necessary to meet the current taxes against said estate, the current monthly proportionate share of insurance, repairs, and incidental expenses, all to be paid in due course; shall each month distribute and pay the remainder in equal shares to the complainant and the defendant Catherine E. Owen during the existence of this trust; but the complainant shall at her pleasure during her natural life remain in the sole undisturbed possession of premises No. 1409 F street, N. W., in the city of Washington, District of Columbia, where she now resides, paying for the use and occupation thereof from the death of the said Susan Cruit at the rate of thirty-seven 50/100 ($37.50) dollars monthly to the trustees hereby appointed for the sole use of the defendant, Catherine E. Owen, so long as said Catherine lives and said occupation of said complainant continues; the said $37.50 being at the rate of $75.00 per month, the rental value thereof, the other one-half share belonging to complainant.

And it is further adjudged, ordered and decreed that complainant recover the costs of this suit to be taxed up by the clerk from the said estate and the said trustees hereby appointed are hereby authorized and directed to pay said costs to complainant.

JOB BARNARD, *Justice.*"

to the undisturbed possession of said premises 1469 F St.,
27 N. W., without liability for rent, since the death of the said Catherine E. Owen.

Subsequent to the death of said Catherine Owen, the complainant Kate Dean Owen filed her petition in said equity cause No. 21,295 setting forth that the trusteeship of said Chapin Brown and this defendant under said decree had expired because of the death of the said Catherine E. Owen and prayed for the appointment of a new trustee.

Whereupon this defendant answered the said petition and the said answer is true and it is as follows:—

"That her father, the late Robert Cruit, by his will dated the 1st day of September, 1858, devised all his real and personal estate (after providing legacies amounting to $200) to his daughter complainant's sister Susan Cruit in and upon certain trusts as will appear from said will.

That said Robert Cruit died in the year 1861 and left him surviving Catherine Cruit, his widow, and mother of this respondent, and Catherine E. Owen, Ann E. J. Cruit, Louisa Cruit and said Susan Cruit his daughters, all of whom are now dead excepting this respondent the said Ann E. J. Cruit.

That respondent's mother and sisters excepting the said Catherine E. Owen lived together after the death of said Robert Cruit until by death, your respondent has been and now is left alone, and ever after her father's death until her death, which occurred on the 31st day of December, 1900 the said Susan Cruit and respondent lived in harmony and devoted their energies to preserving their deceased father's estate, expending out of their share of the income thereof the necessary moneys to erect new buildings and improve the old ones thereon resulting in increasing the annual income of the estate from one of modest size to its present proportions.

No trouble was occasioned until the death of this respond-
28 ent's sister Susan Cruit, when the petitioner prevailed upon her mother the said Catherine E. Owen, who consented most unwillingly, respondent believes, to insist that the control over the estate be vested in some one else besides your respondent, and this was only averted by your respondent effecting an arrangement whereby the decree dated the 17th day of January, 1901, was passed.

It was the intention of said arrangement, respondent avers, and the effect of said decree so she is advised, to terminate this cause and the trust estate in the trustees thereby appointed upon the death of either of them, this respondent and her sister Catherine E. Owen; and said trust estate was terminated by the death of said Catherine E. Owen which occurred on the 14th day of May, 1901.

At once upon the death of her said sister Catherine E. Owen, respondent's former co-trustee notified all the tenants of the estate not to pay any future rent to this respondent and greatly embarrassed and hampered respondent thereby, who has been compelled to

guarantee the said tenants against loss, or else permit them to get behind in their rental payments to the probable damage of the said estate.

This respondent is and has been ever since the death of her said sister Catherine, entitled to the whole of the income of said estate, and she had hoped that she would be allowed to maintain, keep and improve her father's property in like manner as her sister Susan and herself had done intending that upon her death the said estate should come into the hands of all the children of her said sister Catherine in good condition and still further enhanced in value.

This respondent will endeavor to do, if she is not harrassed
20 and controlled by some other person or persons, the appointment of which will only add, as she believes, unnecessary expense and reduce the income of this respondent.

Respondent is unmarried and is advised that no trust exists under said will in any event unless she should marry, and all the trust estate ceased and determined under said will by the death of her sister the said Catherine E. Owen, so that now respondent has a life estate in all of said property fully discharged of every trust.

Respondent also avers that it was sought upon the death of her sister Susan to deprive respondent of the right vested in her by law to administer on her sister's estate as will appear from the original petition of Catherine E. Owen filed in the orphans' court, and this proceeding, she verily believes, is in pursuance of the same systematic attempt to harrass, embarrass, worry and annoy your respondent.

The appointment of a new trustee or trustees is wholly unnecessary for respondent is willing to give judicial or private bond to every person entitled in remainder thereto, that no waste of said estate shall be permitted, that it will be kept in good repair, taxes paid, and kept fully insured; and she is further willing to account to the court at short intervals, but if the petitioner and those who desire to displace respondent are unwilling to accede to this offer, respondent insists upon all her legal rights in the premises.

Respondent says that if a trustee is required, she humbly prays the court that she may be appointed sole trustee, but she cannot consent to the appointment of the trustee with her who has denied her right, and authority over her own property. If need be that other reasons be shown to satisfy the court, she prays that evidence may be taken thereon.

And having fully answered, your respondent prays that
30 said rule may be discharged and the petition of Kate Dean Owen against her finally dismissed."

The complainant Jesse Owen Cugle and the defendant Evanina F. Mackall also answered said petition, and the said matter is still pending and undetermined.

This defendant also says that during the whole time since the death of said Susan T. Cruit she has been and still is solvent and able to answer to all lawful demands against her, and that in and

by the proceedings under said petition, the contention now made by complainants as to the construction of said will of Robert Cruit claimed by them was not raised.

After said decree in said cause was made, this defendant through her own agent collected all said income and the same was paid out by the joint check of said trustees but her co-trustee drew for his client in advance rents as follows:

Repairs made during said joint trusteeship and unpaid by them	$290.50
Half of six months' taxes on farm	101.84
Half of rents collected in advance	162.50
	$554.84
Credit by half of repairs $290.50	145 25
Balance due	$409.59

for which no reimbursement has been made to defendant of either the whole or one-half of the said balance of $409.59.

The real work under said decree was performed by this defendant, through her own agent, and demonstrated that there was no necessity either for a joint trustee or receiver. The commissions taken out by the trustees depleted the income of the said Catherine E. Owen to the extent of one-half of the commissions, nor was *in* income increased by any efforts on the part of the co-trustee.

31 This defendant has notice that an application has been made or will be made in this case for the appointment of receivers, but the result will be the same; that is, to reduce the income without any corresponding benefit, and while this defendant is willing that the court construe said will, she excepts to the jurisdiction of this honorable court to appoint receivers, and if such exception should not be deemed well taken and the appointment of receivers determined contrary to this her objection, this defendant will give bond for the performance of such duties and will engage to act as receiver without compensation for her services. This defendant hereto attaches as a part hereof the affidavit of the defendant Evanina F. Mackall respecting the necessity for a receiver.

This defendant excepts and demurs to the said extraneous matter, namely, the proceedings in said equity cause # 21,996 as of no legal effect upon the true construction of said will respecting the trusts or other matters in it contained, upon the claims now made by complainants, and prays the benefit of this objection as though she had demurred to said allegations in said amended bill therefor.

9. This defendant answering the 9th paragraph of said amended bill, says that the gross annual income derived from said estate is as stated hereinbefore.

This defendant denies that said real estate should produce or can or will now produce more than it does now produce, and she denies

that it should, can or will produce an income of at least $20,000 per annum, and every allegation to that effect mentioned in said paragraph.

This defendant repeats in response to the allegation about receivers what she has above set forth in answer to the preceding paragraph of said amended bill.

10. In answer to the 10th paragraph of said amended bill,
32 this defendant says she denies the right of complainants to require her to account for the rents of the said real estate in the District of Columbia which she has received, but she will account to them fully for their shares in the same whenever it is judicially determined that they are entitled thereto.

Respecting the said farm, this defendant is willing to give the complainants and the said defendant Evanina F. Mackall one-half the net produce thereof, or she is willing to rent the same and hold one-half the net income, subject to determination of the court, and if the same be judicially determined to belong to them, she will turn it over to them or any other part thereof which they may be lawfully entitled to.

She particularly objects to the unfairness of the plaintiffs in being unwilling to take one-half of the proceeds of the said farm in the endeavor to charge her with rent which she does not receive and which she has been unable to receive since the death of her sister Catherine, and thus ungenerously speculate at her expense.

ANN E. J. CRUIT.

E. H. THOMAS,
Sol'r for Ann E. J. Cruit.

DISTRICT OF COLUMBIA, *ss:*

Ann E. J. Cruit being duly sworn, deposes and says that she has read the above answer by her subscribed and knows the contents thereof; that the matters and things therein stated on information and belief, she believes to be true, and that the matters and things therein stated on her personal knowledge, are true.

ANN E. J. CRUIT.

Subscribed and sworn to before me this 28th day of January, 1904.

[SEAL.]

A. S. TAYLOR,
Notary Public.

33 In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL., Complainant-,
vs.
ANN E. J. CRUITT ET AL., Defendants } Equity. No. 23948.

DISTRICT OF COLUMBIA, *ss:*

I, Evanina F. Mackall, defendant in the above entitled cause, on oath say that I do not desire to have a receiver appointed in this cause; that my aunt, the defendant Ann E. J. Cruit is entirely solvent and able to pay every claim that any of the parties to this suit may have against her, including any shares accrued or to accrue of the rents of the real-estate formerly belonging to Robert Cruit's estate; that my said aunt is economical and frugal and has, since the death of Susan Cruit, kept the estate in fine condition, and her management of the property is entirely satisfactory to me and I am willing that she be continued in sole control thereof.

EVANINA F. MACKALL.

Subscribed and sworn to before me this 11th day of November, A. D. 1903.

[SEAL.]

A. S. TAYLOR,
Notary Public.

34 *Separate Answer of Defendant E. F. Mackall.*

Filed March 7, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL., Complainants,
vs.
ANN E. J. CRUIT ET AL., Defendants. } In Equity. No. 23948.

The separate answer of the above named defendant Evanina F. Mackall to the bill of complaint of the above named complainants.

In answer to said bill of complaint I say as follows:

I can neither admit nor deny the truth of the allegations in said bill of complaint and submit all matters in dispute to the determination of the court.

EVANINA F. MACKALL.

GORDON & GORDON,
For Def't E. F. Mackall.

Verification to above answer is hereby waived.

CHAPIN BROWN,
Solicitor for Complainants.

35 *Testimony on Behalf of Complainant.*

Filed June 4, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN and JESSIE OWEN CUGLE, Plaintiffs, *vs.* ANN E. J. CRUIT, EVANINA F. MACKALL, and American National Bank, Defendants. } Equity. No. 23948.

WASHINGTON, D. C., *June* 4, 1904—11 o'clock a. m.

Met pursuant to agreement at the office of Chapin Brown, 323 4½ street, northwest, Washington, D. C.

Present on behalf of the plaintiffs, Mr. Brown.

Present on behalf of the defendant, Ann E. J. Cruit, Mr. E. H. Thomas.

Present on behalf of the defendant, Evanina F. Mackall, Mr. J. H. Gordon.

Present, also, Mr. Thomas W. Widdicombe.

Whereupon Mrs. KATE DEAN OWEN, a witness of lawful age, called by and on behalf of the plaintiffs, having been first duly sworn, is examined,

By Mr. BROWN.

Q. Miss Owen, please state your full name. A. Kate Dean Owen.

36 Q. You are one of the plaintiffs in the present suit? A. I am.

Q. Who was your mother? A. Catherine E. Owen.

Q. Is she living or not? A. No, she died on the 14th of May, 1901.

Q. How many children did she have at the time of her death? A. Three.

Q. Name them, please. A. Mrs. Evanina F. Mackall, by a former marriage; myself, and Jessie Owen Cugle.

Q. And your sister, Mrs. Jessie Owen Cugle, is co-plaintiff with you in this suit? A. She is.

Q. Who is the defendant, Ann E. J. Cruit? A. My mother's sister.

Q. And Evanina F. Mackall is your—— A. My half sister.

Q. And the daughter of your mother—— A. Yes, my mother's daughter.

Q. Catherine E. Owen? A. Yes.

It is hereby stipulated between counsel for the plaintiffs and counsel for the defendants Ann E. J. Cruit and Evanina F. Mackall, respectively, that the allegations contained in the first, second and third paragraphs of the amended bill of complaint, filed December third, 1903, are true, and that no further proof need be taken in reference to those allegations.

37 It is further stipulated between the above mentioned parties by their counsel, that the original will of Robert Cruit, deceased, a copy of which purports to be set forth in the third paragraph of the bill of complaint, may be used and exhibited in evidence at the hearing of this cause, either in the supreme court of the District of Columbia, or in the Court of Appeals of the District of Columbia, or in the Supreme Court of the United States.

It is further stipulated that the language of the original will is to prevail if any difference should appear between that and the language as stated in the bill.

It is further stipulated between the above mentioned parties to this suit by their respective counsel, that the said Robert Cruit died in the District of Columbia in the month of November, 1861, and that he died testate, leaving the said last will and testament, which has been duly admitted to record and probate in the office of the register of wills of the District of Columbia; and that said last will and testament was executed in manner and form so as to convey and devise real estate as well as to bequeath personal property.

By Mr. BROWN:

Q. Miss Owen, you do not know, of your own personal knowledge, anything about the rental value of the property in the estate of your grandfather, Robert Cruit? A. I do not.

It is admitted that the actual value of the real estate embraced in this cause is above the sum of $100,000.

It is further stipulated and agreed that the said Robert Cruit died seized and possessed of property in the State of Virginia, in

38 the county of Alexandria, being a farm consisting of about 200 acres, improved by farm houses and out-buildings.

By Mr. BROWN:

Q. Miss Owen, do you know whether the farm referred to is under rental or not, now? A. I think not.

Q. Was it under rental—— A. It never was.

Q. During your mother's life? A. It never was; no.

Q. You have not heard of it being rented since then? A. I have not.

Q. Miss Owen, how many of your grandfather's children, that is, Robert Cruit's children, are living now? A. One Ann E. J. Cruit.

Q. Has she ever been married? A. No.

Q. About how old is she now? A. Seventy in April, I think.

Q. What was the name of your mother's first husband? A. Evan Evans.

Q. What was the name of her second husband? A. Samuel W. Owen.

Q. Mrs. Evanina F. Mackall is a daughter by the first husband? A. Yes, sir; Evan Evans.

Q. And you and Mrs. Cugle are daughters by Samuel W. Owen? A. Yes, sir.

Q. What other children did your mother have besides Mrs.
39 Cugle and yourself and Mrs. Mackall? A. A boy, Robert Wilson Owen; a girl——

Q. Do you know when he was born? A. In February, 1858; Clara Stewart Owen, February 1859, and William Howard Owen—he would have been——

Q. That was in November, 1865. A. Yes; I could not remember.

Q. Miss Owen, the births of the other children, besides Mrs. Cugle and yourself and Mrs. Mackall, are set out in the fifth paragraph of the bill, as follows: February 4th, 1858, Robert Wilson Owen was born, who died on March 3rd, 1858; February 8th, 1859, Clara Steuart Owen was born, who died on April 19th, 1859. A. Yes, sir.

Q. And on October 28th, 1862, the plaintiff, Jessie Owen Cugle, was born. A. Yes.

Q. Who is the wife of Charles D. Cugle now? A. Yes.

Q. November 1st, 1865, William Howard Owen was born, who died on April 18th, 1872? A. Yes, sir.

Q. Those children, together with yourself and Mrs. Cugle were all the children your mother had? A. And Mrs. Mackall.

Q. Yes, and Mrs. Mackall. A. Yes, sir.

It is further stipulated between the above-mentioned parties by their respective counsel, that the defendant Ann E. J. Cruit, has been collecting all of the rents and revenues from the real estate belonging to the estate of Robert Cruit, from and after the death of Catherine E. Owen—that is, from and after May 14th, 1901.

40 This stipulation as to the collection of rents is not to bind any of the parties to this suit on any accounting, but is simply admitted as a fact.

The execution of the agreement made on or about the 20th day of February, 1903, between the defendants Ann E. J. Cruit and Evanina F. Mackall and the defendant The American National Bank, and the fact that the said bank has retained and still retains one-half of the said yearly rental as a special deposit, is admitted by the above-mentioned parties by their respective counsel.

It is further stipulated between the above-mentioned parties by their respective counsel that the testimony now taken may be used upon the hearing for the appointment of a receiver or for injunction, but it is understood and agreed that any further testimony

may be taken upon such application, or any affidavits and counter affidavits may be used at such hearing, as counsel may be advised.

No cross examination.

KATE DEAN OWEN.

Subscribed and sworn to before me this 4th day of June, A. D. 1904.

WM. HERBERT SMITH,
Examiner-in-chancery.

CHAPIN BROWN, a witness of lawful age, called by and on behalf of the plaintiffs, having been first duly sworn, testified as follows:

41 I am the attorney for the plaintiffs in this suit. I was appointed a co-trustee of the real estate belonging to the estate of Robert Cruit, with the defendant Miss Ann E. J. Cruit, and I served as co-trustee until the death of Mrs. Catherine E. Owen, on the 14th of May, 1901.

There is an allegation in the answer of Miss Ann E. J. Cruit, on the eleventh page, being a part of the eighth paragraph of the answer, in the following words:

"At once upon the death of her said sister Catherine E. Owen, respondent's former co-trustee notified all the tenants of the estate not to pay any future rent to this respondent and greatly embarrassed and hampered respondent thereby, who has been compelled to guarantee the said tenants against loss, or else permit them to get behind in their rental payments to the probable damage of the said estate."

In reference to that allegation I want to say that I never notified aay of the tenants of the estate not to pay any future rent to Miss Cruit, and that I did nothing whatever to embarrass or hamper her. The fact of the matter is that I did not see one of the tenants. I never spoke to one of the tenants in reference to that matter, except that Mr. William H. Saunders called me up over the 'phone and asked me, of his own accord, what he should do in reference to that. I told him that as one of the trustees under the appointment of the court, my term of office expired on the 14th of May, at the death of Mrs. Catherine E. Owen, and that he could act entirely on his own judgment. I advised him neither one way or the other.

42 Mr. Lisle S. Lipscomb called me up over the 'phone and asked me a similar question, and I gave him a similar answer. I never saw any tenant in reference to that matter, never have spoken to any, and the only time I had any conversation about it was by being voluntarily called up by those two parties, Mr. Saunders and Mr. Lipscomb. I have never mentioned the matter to any other tenant, and where such information came from I cannot understand, yet I find it here sworn to in the answer.

I want to say further that I probably was neglectful of my duty in not taking some such step, but I never did do so. My principal reason for not taking that step was to treat Miss Ann Cruit as gently

and as kindly and considerately as I could, as I had always tried to treat her while I was co-trustee with her. We were at that time trying to compromise or settle amicably the matter of the will of Miss Susan Cruit, and that was the principal reason why we did not take steps quicker to file this bill in the present suit.

No cross examination.

CHAPIN BROWN.

Subscribed and sworn to before me this 4th day of June, A. D., 1904.

WM. HERBERT SMITH,
Examiner-in-chancery.

43 *Testimony on Behalf of Defendants.*

Filed June 28, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL. vs. ANN E. J. CRUIT ET AL. } In Equity. No. 23948.

WASHINGTON, D. C.,
June 18th, 1904—10.30 o'clock a. m.

Met pursuant to notice at the office of E. H. Thomas, Esq., No. 918 F street, northwest, Washington, D. C.

Present on behalf of the defendant: Mr. Thomas.

No appearance on behalf of the complainants.

The depositions hereinafter set forth are taken subject to the right to counsel for the complainants and to J. H. Gordon, counsel for the defendant, to make such objections thereto as to them may seem proper, and subject to the right to cross-examine.

Whereupon, NOTLEY ANDERSON, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined,

By Mr. THOMAS:

44 Q. Do you rent any part of the Cruit estate? A. Yes, sir.

Q. I wish you would describe what part you rent? A. It is a plat of land on the corner of Fourteenth and G streets, of 100 feet on Fourteenth street and 37 feet on G street. I rent also another lot on G street that is 24 feet front on G street by 37 feet deep.

Q. How many houses and what kind of houses are there on this tract of land, on Fourteenth street and on G street, together? A. There are eight houses.

Q. What kind of houses? A. They are 12 feet front by 27 feet deep, one story high, built of brick.

Q. How long have they been built? A. I could not just tell you; but I should think for about 14 years.

Q. Is the piece of property on G street improved? A. Yes, sir; with the same character of buildings.

Q. What is the number of the house? A. 1408 and 1408½ G street.

Q. They are buildings of the same character as the others? A. Yes, sir.

Q. What are the numbers of the other properties? A. No. 614 Fourteenth street, 616 Fourteenth street, 618 Fourteenth street, 620 Fourteenth street, and 622 Fourteenth street; I think those are the numbers of the Fourteenth Street property.

45 Q. How long have you been renting this property? A. I should think for about 14 or 15 years.

Q. Did you rent this property after the death of Miss Susan Cruit, from Chapin Brown and Miss Ann Cruit, trustees, or did you pay them rent? A. I rented it from Miss Susan Cruit, and after her death the lease was renewed by the other sister, Miss Ann Cruit.

Q. After Miss Susan Cruit's death, do you remember that for a time Mr. Chapin Brown and Miss Ann Cruit were trustees? A. No, sir; I never knew Mr. Brown to be a trustee in the matter.

Q. Did you have any talk with Mr. Brown, after Miss Ann's death, about the property? A. Yes, sir; Mr. Brown came to see me about the property and wished to know how I was in possession of it. He said that he had searched the records at the court house and he could not find anything there in my name. He then asked me how much of it I occupied, and I think I told him it was 37 by 100 feet.

Q. What explanation did he give to you as to why he was making these inquiries? A. As I understood him, he was the attorney for the Owen estate, and said for me not to give myself any uneasiness, that he did not propose to disturb me.

Q. What rent did you pay and do you pay for the property?

46 A. I am paying $288 a month, I think.

Q. Will you be kind enough to state whether Miss Ann Cruit, after the death of her sister, has or has not increased the rental of the property? A. She has. Under the last lease, which was made since Miss Susan Cruit's death, the rent has been increased.

Q. Do you remember when the increase occurred? A. It was at the time of the renewal of my lease, which was last September, a year ago.

Q. That would make it September, 1902? A. I think that probably is right.

Q. How much increase in the rent was then made? A. I could not just tell you; but it was something over $600 a year.

Q. Will you be kind enough to state whether the amount of rent which this property that you now hold brings is a small or large

ental for the property? A. I think it is a large rent for the property.

Right to cross examine is reserved to counsel.

NOTLEY ANDERSON,
By the Examiner, by Consent of Counsel.

47 LISLE S. LIPSCOMB, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined,

By Mr. THOMAS:

Q. Do you rent any of the Cruit property located on Fourteenth street, northwest, between F and G? A. Yes, sir.

Q. What is the number of the house you occupy? A. No. 612 Fourteenth street.

Q. How long have you been a tenant in that property? A. I think for about ten years, and maybe more than that.

Q. What is your business? A. I am a real estate agent.

Q. How long have you been buying and selling real estate in the District of Columbia? A. About fifteen years.

Q. You may state whether that property is a modern house, or whether it is an old house? A. It is an old house, a very old house.

Q. What was its condition when you moved into it ten years ago, if you can recall? A. It was in just about the same condition it is now, that is, the building was in fair condition but it was an old building. It was in good repair.

Q. Was it suitable for modern office purposes? A. No, sir.

Q. Will you be kind enough to state what rental you paid
48 when you moved into that property? A. When I first went in there I paid $150 a month. Then when the panic came on and rents were reduced all over the city the rent of the building was reduced to $100 a month. That was probably in 1893, as nearly as I can recall. After that my rent was increased, and I now pay $115 a month.

Q. Will you be kind enough to state whether that is the highest rent that could be paid for that property, taking into consideration its condition? A. I think it is an extremely good rent for the property, because the party who leases it has to furnish all the fuel and light, and in a building that is old and hard to heat, having large rooms, the fuel bill is a very considerable item. It costs me pretty nearly $50 a month for fuel and gas.

Q. You may state whether your rental was increased after the death of Miss Susan Cruit, by Miss Ann Cruit? A. It was.

Q. How much did Miss Ann Cruit increase your rent? A. $15 a month.

Q. Do you recall making a lease with Chapin Brown and Ann Cruit, trustees, for $108 a month? A. Yes, sir.

Q. And that lease has expired? A. Yes, sir.
Q. And about what time? A. That expired last March.
Q. After that Miss Ann Cruit increased the rent to $115 a month?
49 A. Yes, sir.
Q. Assuming that house No. 1407 F street rents for $130 a month, that house 1405 F street rents for $125 a month, that house 606 Fourteenth street rents for $30 a month, that house 608 Fourteenth street rents for $100 a month, that house 610 Fourteenth street rents for $150 a month, that house 612 Fourteenth street rents for $115 a month, that the property occupied by Mr. Anderson, who has just testified while you were present, rents for $288 a month, and that the portion of the property on G street occupied by Small rents for $100 a month, under the agency of Miss Ann Cruit, I wish you to state whether those rentals are the fair rental values of the property? A. I think they are very good rental values.
Q. Will you please state whether, in your judgment, it is possible, in the present condition of the property, to double this income? A. I do not think it could be increased at all. I am very sure it could not be increased, so far as my own lease is concerned, and I think that the rentals are very good.
Q. Do you know of any way in which those rentals could be increased? A. I would hate to try to do it if I owned the property. I do not believe they could get any more rent than they are getting. I think they are getting good rent under the circumstances, as the buildings are old and the heating facilities are inadequate.
Q. After you made a lease with Mr. Brown and Miss Ann
50 Cruitt, trustees, did you have any conversation with Mr. Brown about paying rent to Miss Ann Cruit, and if so please state what it was? A. I cannot recall that. I have been trying to refresh my memory about it and I cannot. There was something said at that time about not paying the rent, and I did not pay the rent, as a matter of fact, for some days.
Q. How did your hesitation come about. I do not ask you for any conversation, but what is your recollection as to what led to your hesitation? A. On account of the death of Susan T. Cruit, with whom I had a lease at that time, as I recall it. My lease was with Susan T. Cruit, trustee.
Q. With whom did you have the conversation which caused your hesitation? A. I think I had it with Mr. Chapin Brown.
Q. Did you have it direct or over the telephone? A. Over the telephone as I recall it.
Q. Do you remember getting a letter from me assuring you that Miss Ann Cruit was the proper one to collect the rents? A. Yes, sir.
Q. And that she would save you harmless, if you paid your rent to her? A. Yes, sir.
Q. What has become of that letter? A. I have looked for it and

cannot find it. I know absolutely that I got the letter from you.

51 Q. You have made careful search for it and cannot find it? A. Yes.

Q. Has it been mislaid or destroyed? A. I keep my letters, and I would not say I could not find it if I had more time.

Q. I wish you would take time to find it if you can and let the examiner have it, if you find it. A. I can do that. I know I got the letter, and that was about the tenor of it. There is no question about that.

Q. After the receipt of that letter you continued to pay your rent to Miss Ann Cruit? A. I did, sir.

Right to cross-examine the above witness is reserved to counsel.

LISLE S. LIPSCOMB,
By the Examiner, by Consent of Counsel.

52 HARRY L. RUST, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined,

By Mr. THOMAS:

Q. Do you rent any property belonging to the Cruit estate? A. Yes, sir.

Q. What is the number of the property you occupy? A. 608 Fourteenth street.

Q. How long have you been a tenant in that property? A. Since the first day of June, 1894.

Q. What sort of property was it when you went into possession and what is its position now? A. It was an old dwelling with high stone steps. There have been numerous changes made both in the front and in the interior.

Q. By whom were those changes made? A. The changes in the first story above the ground floor were made by a sub-tenant of mine, the Brooklyn Daily Eagle. The other changes were made at my own expense, the principal ones being in the front and interior on the ground floor.

Q. When were the changes made by the Brooklyn Daily Eagle? A. They were made about 1895.

Q. And at about what expense? A. At an expenditure of at least $500.

Q. When did you make your improvements? A. Prob-
53 ably about 1903.

Q. At how much cost? A. At an expenditure of about $600.

Q. What was the rental you paid when you first entered into possession of the property, and you may state whether that was increased or decreased during your tenancy? A. In 1894 I began

with a rental of $100 a month. That does not include the small store adjoining which I believe is 606 Fourteenth street. In October 1894 the rent was $100 per month, and I think it has remained at that rate ever since, the repairs having been made principally at my own expense.

Q. Was the rent increased after Miss Susan T. Cruit's death by Miss Ann Cruit? A. The amount of rent that I paid per month was not increased; but after the death of Miss Susan Cruit I expended between $600 and $700 on the property, which might be considered as a very substantial increase in the rent.

Q. That greatly improved the property for office purposes, did it not? A. It did.

Q. What is your business? A. I am a real estate broker.

Q. How long have you been in that business? A. Since 1887.

Q. After the death of Miss Susan T. Cruit, and after the death of Mrs. Catherine D. Owen, did you get a letter from me, as attorney for Miss Ann Cruit? A. Yes, sir.

54 Q. Have you got that letter with you? A. I have. (The witness produces the letter.)

Q. I notice that this letter is dated the 31st of May, 1901. Had you made any question, prior to that time, about the payment of your rent to Miss Ann Cruit? A. My recollection is that after the death of Miss Susan T. Cruit, to whom I had been paying the rent, I paid it by check to Miss Emily A. J. Cruit and Mr. Chapin Brown, trustees, jointly. After the death of Mrs. Owen some question about the payment of the rent arose, and upon the receipt of this letter from you dated May 31st, 1901, I thereafter paid the whole rent to Miss Emily A. J. Cruit.

Q. How did the question about the payment of rent which you speak of arise, after the death of Mrs. Owen? A. I am not certain now how the question did arise. It was probably talked of between myself and some of the neighboring tenants, and I may have called on Mr. Thomas about it. At any rate I received this letter from him.

Q. Do you recall whether you had any conversation, personally or over the telephone, with Mr. Brown about it? A. I do not recall any conversation in connection with Mr. Brown about it.

Mr. THOMAS: I offer this letter in evidence.

The said letter is marked Exhibit H. L. R. No. 1, and is in the words and figures following, to wit:

Telephone, main 1029.

Edw. H. Thomas, Attorney at Law, 916 F Street N. W., Washington, D. C.

55 MAY 31, 1901.

H. L. Rust, Esq., 608 14th St. N. W., city.

SIR: You are hereby notified that Miss Emily A. J. Cruit is entitled to the possession and rents of No. 608 14th St. N. W. Washington, D. C., which you now hold of her as tenant, and that no other person is entitled thereto during her life.

You are further notified that by the death of her sister Mrs. Catherine E. Owen on the 14th day of May, 1901, all authority and estate of every trustee, Mr. Chapin Brown included, ceased and determined.

Demand for rent now due and to accrue on and since May 15, 1901, on behalf of Miss Cruit is hereby made and you are respectfully requested at once to signify to me your compliance or refusal.

Miss Cruit is able and willing to guaranty you against all loss by reason of the payment of rent to her.

Very respectfully,

E. H. THOMAS,
Att'y for Miss Cruit.

The right to cross-examine the above witness is reserved to counsel.

HARRY L. RUST,
By the Examiner, by Consent of Counsel.

56 WILLIAM H. SAUNDERS, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined,

By Mr. THOMAS:

Q. You rent 1407 F street from the Cruit estate? A. Yes, sir.

Q. How long have you been a tenant there? A. For about 16 years.

Q. What rent did you pay when you first went there? A. $125 a month.

Q. What sort of a building was it? A. The building, at that time, was practically the same as it is now, except that it is an older building now, and probably more in need of repairs than it was at that time. At that time the rear portion of the building came to me in the shape of a legacy from John Sherman, with a debt on it, which I had to discharge.

Q. It was an old dwelling house, as I understand you? A. Yes, sir.

Q. You rented the property for office purposes, in your business? A. Yes, sir.

Q. Which is what? A. The real estate business.

Q. How long have you been engaged in that business? A. For about 16 years.

Q. Has it any modern conveniences for office purposes?
57 A. The only modern convenience it has, if that may be called such, is inadequate electric light.

Q. Who has paid for and made repairs on the property during your tenancy? A. The principal expenses incurred there have been incurred by the tenants from time to time. There has been some papering and painting, and some plumbing work &c., done by the owner of the property; but the absolute betterments on the property, outside of ordinary repairs to the building, have been paid for by the tenants.

Q. You say you paid $125 a month when you first entered into that property? A. Yes, sir.

Q. How long did you continue to pay that? A. I think I must have paid that for six or eight years of my tenancy.

Q. What do you pay now? A. I pay $130 a month.

Q. How long have you been paying that? A. I have been paying that, under a lease, for probably three years and a half. Previous to that I paid $60 additional, for several years, in the way of additional taxes on the property. I agreed to pay that much additional in consideration of an increase in the taxes on the property.

Q. Since you have been paying $130 a month have you been paying anything additional for taxes? A. No, sir.

58 Q. With whom was your lease made? A. With Miss Susan T. Cruit. I am occupying the premises now under that lease.

Q. When will it expire? A. In about three years and a half.

Q. Yet to come? A. Yes, sir.

Q. Do you recall that, after the death of Mrs. Owen, you had a conversation with Miss Ann Cruit, in her house, in my presence, respecting the advisability of continuing the payment of rent to Miss Cruit? A. I remember a conversation in that connection.

Q. Do you remember whether or not Miss Cruit assured you that you should not lose, if you paid her the rent? A. She did assure me that she would hold me harmless in case I paid the rent to her.

Q. Do you recall how the necessity for this guarantee on the part of Miss Cruit arose, or why it became necessary for her to assure you that she would save you harmless? A. I am not distinct about how the question originated. My impression is that Lisle S. Lipscomb made inquiry of me as to whether I intended to pay my rent to Miss Cruit. I paid very little attention to that, and later the point was raised by Mr. Chapin Brown in some way, as I heard, and I called him over the telephone and asked him if he had notified any of the tenants of the Cruit estate not to pay their rent to Miss Cruit? He told me that I could go ahead and pay my rent to Miss Cruit
59 if I desired, and that he would not interfere with it. I did not consider that I needed this assurance from Mr. Brown, but I wanted to know just what his attitude in the matter would be.

Q. Assuming that house No. 1407 F street rents for $130 a month, that house 1405 F street rents for $125 a month, that house 606 Fourteenth street rents for $30 a month, that house 608 Fourteenth street rents for $100 a month, that house 610 Fourteenth street rents for $150 a month, that house 612 Fourteenth street rents for $115 a month, that the property occupied by Mr. Anderson rents for $288 a month, and that the portion of the property on G street occupied by Small rents for $100 a month, under the agency of Miss Ann Cruit, I wish you to state whether those rentals are the fair rental values of the property? A. For some time previous to the leasing of 610 Fourteenth street to the American national bank, I had charge of the collection of the rents for that building, excepting for the basement. The total rental, including the basement, with the rent of which I was familiar, amounted to, when all the rooms were occupied, $123.50 a month, at its best. I make that last parenthetical statement in view of the fact that there were improvements made there by Miss Cruit, by which the rents were increased some $15 or $20 a month in the aggregate. I believe there were times when there were vacancies, one during my management, when one of the suites of rooms renting for $15 a month was vacant for as long as eight or nine months. Vacancies occurred from time to time that would curtail the amount of rent. I should judge,
59½ without having made a strict calculation, and in fact I do not believe I could make an absolutely accurate calculation, the income from the property represented somewhere between $95 and $105 a month. I have never had the renting of any of the other buildings. The subrenting of my own rooms at times has been satisfactory and at other times it has been very unsatisfactory. The rooms are old and on the first floor. When I endeavored to rent two rooms there for $17.50 a month, I had them vacant for eight or ten months at a time.

Q. You are speaking now of 1407 F street? A. Yes, sir.

Q. You may state whether or not it is a very desirable location for the real estate business? A. It is a desirable location, but I think there are more desirable locations near there. I have a rather indefinite opinion about the other property. If I am called upon to answer that question I will say that I am in doubt as to whether the rents could be raised on that property or not, in order to make the income from it more satisfactory. There are numerous office buildings in the neighborhood with all modern appliances, and in some of them the rents are not very much higher than some of the rooms I have mentioned have brought. Naturally the tenants seek the most comfortable and economical places they can get.

Q. Will you please state some of the modern office buildings erected near this property? A. There is the Kellogg build-
60 ing, the Wyatt building, the Bond building, the Colorado building, and there are several buildings between Fourteenth

and Fifteenth streets, on G street, the names of which I am not familiar with.

Right to cross-examine this witness is reserved to counsel.

WILLIAM H. SAUNDERS,
By the Examiner, by Consent of Counsel.

The further taking of these depositions was thereupon adjourned until Monday, June 20, 1904, at 3.30 o'clock p. m. at 1409 F street, northwest, Washington, D. C.

61 WASHINGTON, D. C.,
MONDAY, *June 20th*, 1904—3.30 o'clock p. m.

Met pursuant to adjournment, at 1409 F street, Washington, D. C. Present on behalf of the defendant Ann E. J. Cruit, Mr. Thomas. No appearance on behalf of the complainants.

Whereupon, Miss ANN E. J. CRUIT, a witness of lawful age, called by and on behalf of the defendants, having been first duly sworn, is examined,

By Mr. THOMAS:

Q. Miss Cruit, will you please state what the name of your sister Mrs. Owen's last husband was? A. Samuel W. Owen.

Q. About when did he die? A. I think he died the first or second day of January. It must have been 1874, for mother died in 1876, two years afterward. To the best of my belief that is correct.

Q. Did Mr. Owen have any property? A. The Owen house was their father's.

Q. The Owen house was what, do you say? A. The Owen house belonged to their father.

Q. Whose father? A. Mr. Samuel Owen's father. He
62 gave it to the girls. Now this is what they have told us. He gave it to his two granddaughters, Kate Dean Owen and Jessie Owen. Then he had lots near Iowa circle.

Q. He had lots near Iowa circle? A. Yes.

Q. Did he not own those lots at the time your father, Robert Cruit, made his will? A. Oh, no sir.

Q. He did not own them? A. No, sir; I don't think he did. As far as my belief goes, he did not.

Q. I want to ask you about the farm; and I want to know from you whether you and Mrs. Owen divided the produce of the farm after the death of your sister, Susan, and until the death of Mrs. Owen? A. Yes, sir.

Q. How long had that practice continued, respecting your sister Susan, yourself and your sister Mrs. Owen? A. It continued——

Q. I am asking about Mrs. Owen, Miss Susan and yourself. How long had you been dividing the farm produce? A. Always, from the time mother died.

Q. From the death of your mother; and your mother died in 1876? A. Yes, sir.

Q. After the death of Mrs. Owen, did you continue to divide the produce of the farm with anybody? A. With Kate Dean Owen, until she refused.

63 Q. Until Miss Dean refused? A. Yes.

Q. How long did you divide the produce of the farm with Miss Dean Owen, after the death of her mother? A. If I have to tell you in plain terms, until the cows went dry, and then we stopped.

Q. How many months was that after Mrs. Owen died? A. Up to last year. Mrs. Owen has been dead three years, and I think it has been only a year since Miss Dean Owen refused.

Q. Did she tell you why she refused? A. No, sir. We sent word and telephoned that now we had milk; and she said she wanted no more. I gave her produce on the farm as long as we had it, and when the cows went dry we had to stop. Then I had Mr. Widdicombe telephone one day that now we would send milk, and she said she didn't want it.

Q. That was her telephone message? A. Yes, sir.

Q. Did you ever prevent Miss Dean Owen from having her share of the produce of the farm? A. No, sir.

Q. Did you ever prevent Mrs. Cugle? A. She lived in Baltimore——

Q. I only ask you whether you prevented her? A. No; not at all.

Q. Has the farm been a source of profit to you at all? A. No; we do the best we can——

Q. The question is whether you have made any money

64 out of the farm? A. No, sir.

Q. You had charge of your father's estate after the death of Mrs. Owen? You have kept the property in repair and have paid the taxes? A. I have.

Q. And collected the rents as they became due? A. Yes, sir.

Q. You may state whether, after the death of Mrs. Owen the taxes on the real estate were increased? A. The taxes were increased a little.

Q. Did you require the tenants to pay more rent, because the taxes had been increased? A. Yes, on that account—those that I could. If they had a lease, you know, I couldn't do it.

Q. In the case of some that had leases you could not do it; but with the others you could, and they did pay more? A. With the others the increase was the amount of the taxes. I asked them to pay that. I always tried to be as moderate as possible, and kind to them, just as we had always been.

Mr. THOMAS: I offer in evidence the form of power of attorney referred to in the answer of Miss Cruit, in paragraph 8.

By Mr. THOMAS:

Q. I ask you, Miss Cruit, at the time your sister Susan died, did Mr. Brown present you with this power of attorney and ask
65 you to execute it? A. That was the morning after Susan's burial; but I didn't sign any paper.

Q. I ask you whether he produced the paper? A. A gentleman with him had a——

Q. Did he present the paper to you? That is what I want to know? A. I suppose it was that. It was something about signing, and I declined. He asked me to sign this paper, but I didn't know what the paper was, and I wouldn't if I had.

Q. What did you do with that paper that was handed to you? A. I didn't take it in my hand. I merely said, "No, I will not attend to any business. No, I am going up to see Mrs. Owen. She is very sick."

Q. At the time that Miss Susan died do you remember how much Mrs. Owen owed of money that she had overdrawn, if any, from the income of the property? A. She told me $900, and I believed it.

Q. How much do you say? A. She told me $900; and she told me two or three times that same thing.

Q. Who told you? A. My sister Susan. I knew half was mine and half hers.

Q. Did you have a talk with Mrs. Owen about that? A. No, sir; because she was sick.

66 Q. What do you remember about the tenants being notified to pay the rent after the death of Mrs. Owen? A. They never told me anything. They didn't tell me, because they always sent the check and never talked about business.

Q. I did not ask you that, Miss Ann. What I want to know is what trouble you had, if any, or what you know about the tenants being notified by anybody not to pay you any rent after Mrs. Owen died? A. All I heard was through Mr. Widdicombe. I heard, but I could not say positively, because the man didn't come to me to talk.

Q. Did Mr. Saunders come to see you? A. I think he did; but I have heard so much about it that it really troubles me to tell.

Q. You cannot recall? A. No, sir. I would rather say nothing about that, because I wish to be exact. I do not wish to say anything for or against anybody.

Q. Who kept the accounts during the time you acted as trustee? A. As clerk, Mr. Widdicombe did it for me, at my suggestion. I told him what to put down. I always looked at it, and saw it.

Q. Will you be kind enough to state, after your sister Catherine was married to Mr. Samuel W. Owen, what statement, if any, Mr. Owen made to your father respecting his intention of spend-
67 ing all the money that was coming to your sister from your father? A. He said: "What you have is your daughter's, and what is hers is mine." Those were the words.

Q. What did your father say? A. He said: "You are a fool." That is all the answer he made; and he said to my mother: "I will make a will that he shall never have a dollar of my money," and he made a will. Those are the words he used.

Q. Where did that conversation occur, Miss Ann? A. I couldn't say exactly.

Q. Where were you living at that time? A. I was living here.

Q. In this house? A. Always. I never lived anywhere else.

Q. Did that conversation occur in this house? A. Yes, sir.

Right to cross examine this witness is reserved to counsel.

ANN E. J. CRUIT,
By the Examiner, by Consent of Counsel.

68 THOMAS W. WIDDICOMBE, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined—

By Mr. THOMAS:

Q. How long have you been residing with Miss Ann Cruit, Mr. Widdicombe? A. I have taken my meals here more or less, since 1861, and I have resided in the house going on seven years now, and have lived here.

Q. Do you recall, during the lifetime of Miss Susan T. Cruit, how the produce of the Virginia farm was distributed? A. It was distributed to Mrs. Owen, Miss Susan T., and Ann Cruit.

Q. After Miss Susan's death what was done with the produce of the farm? A. There was no change made until Miss Dean Owen refused to take it, a little over a year ago—a year ago last month, I think.

Q. In what shape was the produce? What was there to distribute from the farm during all this time? A. Such stuff as was raised in the garden, and poultry, eggs, milk, and cream.

Q. How, during all this time, was the farm run? Who paid the expenses of it, and who paid the taxes? A. Miss Ann Cruit paid the expenses, and paid the taxes.

Q. During the lifetime of Miss Susan, who paid it? A.
69 Miss Susan paid it during her lifetime.

Q. After her death you say Miss Ann paid it? A. Yes.

Q. Was the farm a source of profit to Miss Ann? A. Not at all; no.

Q. Has there been any demand made on Miss Ann for the occupation of a portion of the farm by Miss Dean Owen or by Mrs. Cugle? A. Not to my knowledge.

Q. You have been here all the time, managing Miss Ann's business? A. I have.

Q. And you would have known of any such demand, if it had been made, would you not? A. I would.

Q. Has Miss Ann done anything to exclude Miss Dean Owen and Mrs. Cugle from the farm property? A. Nothing at all.

Q. Has there been any demand made on Miss Ann to rent the farm property? A. Not that I know of. I never heard of any.

Q. When you say you never heard of it—have these parties talked about this farm with Miss Ann in your absence, or do you know whether they have made a demand? A. I do not think they ever talked with Miss Ann about the property at all—Miss Dean Owen and Mrs. Cugle. If they had she would have told me. I never heard of it.

Q. There has been no formal demand, at any rate, for any
70 rent? A. None at all.

Q. Or any formal demand to rent the farm and divide the proceeds with anybody? A. None at all, to my knowledge.

Q. I am asking about a demand on Miss Ann. A. None at all, Mr. Thomas; none.

Q. Since the death of Miss Susan Cruit, who has kept the books showing receipts and disbursements, of the rents of this estate? A. Since the death of Miss Susan?

Q. Yes. A. I kept them.

Q. Did you keep the books during the time Chapin Brown and Miss Ann were trustees? A. I did. I think Mr. Brown kept an account as well, and I think he took it off of my books. At least, I used to carry my books down there, and we would compare them.

Q. You would take your books down to his office and compare them? A. Have them compared, yes; once or twice.

Q. What do you know, as shown by any accounts of Miss Susan Cruit, respecting any indebtedness on the part of Mrs. Owen for overdraft on the income of the property? Do you know anything about that? A. Before the death of Susan T. Cruit?

Q. Yes. A. I helped Susan T. Cruit make up those accounts. I footed up her balances &c. for her, and we found that Mrs.
71 Owen had been overpaid about $900 more than she was entitled to.

Q. At the time of Robert Cruit's death, do you know about what the rental income of the property was—his real estate? A. I cannot say that I do from my own knowledge; but only from what I heard Miss Susan Cruit say.

Q. Do the books show? A. That I don't know. Miss Susan Cruit used to say to me it was less than $3,000.

Mr. THOMAS: I do not claim that the statement of Miss Susan Cruit to Mr. Widdicombe is evidence.

By Mr. THOMAS:

Q. What are the present rentals of the property—the gross rentals? A. I think I made you a statement. I could not tell exactly now, but I think I made you a statement.

Q. (Handing paper to witness.) I show you this statement, and ask

you to refresh your recollection by it, and state the gross annual income, for 1903. A. (After referring to paper.) $10,989.

Q. During the time Mr. Brown and Miss Ann Cruit were trustees did they make any leases? A. They made one to Mr. Lisle S. Lipscomb.

Q. Was that the only lease they made? A. That is the only one I remember.

Q. Do you remember how long that was to run? A. Three years:

72 Q. From about what time? Do you remember the time? A. I think that lease was made in March, 1901, Mr. Thomas, for three years.

Q. Do you recall that after Mrs. Owen's death the rents on the property were raised by Miss Ann Cruit, through your efforts? A. They were.

Q. Will you please state what rents were raised? A. The rents were raised on all the people whose term of lease had expired, after the new assessment.

Q. The new assessment for taxes? A. Yes, sir.

Q. Can you not give me the names and addresses? A. I can. Notley Anderson, ground rent on 14th street from 612 up to G street and along G street to the Bell building; and then twenty some feet on G street—No. 1408, I think.

Q. What other property, besides Anderson's? A. No. 1405 F street.

Q. Occupied by Shields? A. The basement is occupied by Shields, and the upper part by E. L. McClelland.

Q. Shields paid how much a month? A. $40 a month.

Q. And it was raised to what? A. $45 a month.

Q. And McClelland paid what? A. $70 a month, and it was raised $10.

73 Q. It was raised to $80 a month? A. Yes.

Q. How about Small? A. Small was paying $60 a month, and we raised Small's rent to $70 a month; that is $10 a month—until we made a new lease with him a short time ago. Then it was raised to $100.

Q. And the bank property; that is what number? A. 610 Fourteenth street.

Q. That was leased under an arrangement for $150 a month? A. Yes, sir.

Q. What had it been renting for before that? A. That varied, Mr. Thomas.

Q. I mean on an average? A. It was rented out by the room.

Q. On an average what did it rent for before that? A. Sometimes it would bring $90, and sometimes $100. Then vacancies occurred and it went down to $75. From $75 up to $100, and sometimes a little bit more.

Q. During the time that Mrs. Owen was alive, what rent was

charged against and paid by Miss Ann Cruit for the house 1409 F street? A. $37.50 a month.

Q. Did Miss Ann Cruit pay that during the whole of the time that intervened after the death of Miss Susan Cruit, to the death of Mrs. Owen? A. She did.

74 Q. During the existence of the trust of Mr. Brown and Miss Ann Cruit, will you be kind enough to state whether there was any overdraft on the part of Mrs. Owen, and if so how much? A. I think I gave you that statement. I made that up. I cannot remember the exact figures; but I think you have the statement there that I made out.

Q. There is a statement in the answer. Did you give me the figures for that statement? A. Yes, sir.

Q. Where did you get the figures from? A. I got the figures from off the book. One portion of it was the amount that Miss Ann had overpaid. She paid the taxes for a whole year in November. Miss Owen died in May 1901, you see, and the November previous to that she paid the taxes for a whole year.

Q. You mean Miss Ann paid the taxes? A. For a whole year, on the farm, yes; and Miss Owen died in May, you see. That left six months' taxes, you understand, that she had overpaid—the half of six months' taxes. The taxes were $300 and some odd dollars, and some cents.

Q. (Handing paper to witness.) I show you this paper, and ask whether that is the memorandum you made for me? A. It is; yes, sir.

Q. And that was made from the books kept by you? A. Yes, sir.

75 Q. Did those books contain true entries? A. Yes, sir.

Q. Had those books been inspected by Mr. Brown, and did he know of those items? A. Mr. Brown should have known it, of course. He had an account of it.

Q. I wish you would explain this. There is an item on that statement of $290.50 for repairs made during the joint trusteeship, is there not? A. Yes, sir; which were unpaid for by Chapin Brown and Miss Ann Cruit. Miss Ann Cruit had to pay those bills after the death of Mrs. Owen.

Q. That is to say, Miss Ann Cruit had to pay $290.50 for repairs on the property that had been made during the lifetime of Mrs. Owen, after the death of Miss Susan Cruit? A. Yes.

Q. And that $290.50 has never been refunded to her, has it. A. Never.

Q. The half of six months' taxes you speak of, on the farm, is $101.84? A. Yes.

Q. What do you mean by half of rents collected in advance, $162.50? A. I mean this. The rents, some of them, were paid on the first day of the month in advance, and Mrs. Owen died before that month was out. Mrs. Owen received the full benefit of those rents for a whole month, when she would only have received it for

half a month, because her death intervened before the month
76 was out.

Q. How much were those rents, collected in advance, in that way? A. Here it says $162.50.

Q. Is that correct? A. That is correct; yes, sir. All the rents were not paid in advance. That was only for rents that were paid in advance.

Q. I understand. You only charged against Mrs. Owen's estate those rents that were actually paid in advance? A. Yes, sir; that is all.

Q. Crediting one-half of repairs $290.50 to Mrs. Owen's estate leaves a balance of $409.59? A. Yes.

Q. Has Miss Ann Cruit ever been reimbursed for that? A. She has not. There has never been a settlement during the administration of Miss Ann and Mr. Chapin Brown. During the lifetime of Mrs. Owen Mr. Brown never made a settlement.

Q. During the time that Mr. Brown was trustee with Miss Ann Cruit, who actually collected the rents? A. Mr. Saunders' rent and Mr. McClelland's rent were sent to the house.

Q. Sent to the house? A. Yes.

Q. How about the others? A. The rents of the little cigar store and Mr. Shields' rent, and Lisle Lipscomb's rent I collected. I did it all the time Mr. Brown was trustee, and I do it now.

77 Q. Has there been any change in the method of collecting rents? A. None whatever.

Q. Since the death of Miss Susan T. Cruit? A. Yes, there has been some, because I do not think Miss Susan T. Cruit ever sent anybody a bill or ever asked anybody for——

Q. I have not asked you about the method during her lifetime, but after her death have the rents been collected in the same way? Has there been any difference in the method of collecting the rents? A. None; only I collected these rents as I told you. I went to collect them.

Q. You started to do that when? A. After the death of Susan T. Cruit.

Q. Has that same process continued from the date you started in, ever since? A. Ever since, up to date; yes, sir.

Q. That is what I meant. I did not make myself very clear. What have you to say about the likelihood of increasing the rental of this property? A. I would say that it was rather a difficult matter to get the increased taxation from the tenants whose term of lease had expired, Mr. Thomas. They thought it was a little too much then, and I had to talk to them right smart to get them to do that.

Q. Did you collect the rent from Lisle S. Lipscomb that was due on the 15th day of May, 1901, and if you did not, why did
78 you not? A. I went around to collect his rent and he said to me: "I can't pay you any rent now." I said: "Why?"

He said: "I was notified by Mr. Brown's office not to pay rent for a while, until further notice" or something to that effect.

Q. What did you do then on behalf of Miss Cruit? A. I came back and told Miss Ann, and I said to her: "We had better notify Mr. Thomas, and see what we shall do."

Q. What did I do? A. You came up and saw Miss Ann, and I think you had a talk with Mr. Saunders about the rent, and so on, and he told me something about it.

Q. Were you present when I had a talk with Mr. Saunders? A. I was here, yes.

Q. What did he say? A. Mr. Saunders intimated—I don't think he said it right straight out—that he had been approached upon that subject about paying rent and so forth and so on. He didn't say by whom, but he said he had afterwards called up Mr. Brown over the telephone, and Mr. Brown told him that—I forget just how he worded that; he worded it kind of funny. In the first place he intimated that Brown told him not to pay the rent, and afterwards he said he called Brown over the telephone and Brown said he wouldn't interfere, and he could pay it.

Q. What guarantee on the part of Miss Cruit did I give
79 Mr. Saunders? A. You wrote all the tenants a letter, and sent each one a letter, stating that Miss Ann would guarantee them against any trouble that they might have from paying her the rent.

I would like to add something to my statement with reference to my interview with Mr. Lipscomb.

Q. What do you desire further to say about the interview with Mr. Lipscomb? A. I desire further to say that in a few days afterward I went around to see Mr. Lipscomb again, after you had written to him, telling him you would guarantee him against any loss he might sustain, and he said "All right; I will pay." That was probably ten days or so afterwards, and he paid me after that without any further trouble.

Right to cross-examine the above witness is reserved to counsel.

THOMAS W. WIDDICOMBE,
By the Examiner, by Consent of Counsel.

The further taking of these depositions was thereupon adjourned until Tuesday, June 21, 1904, at 3 o'clock p. m. at 916 F street, N. W., Washington, D. C.

80 WASHINGTON, D. C.,
TUESDAY, *June* 21, 1904—3 o'clock p. m.

Met pursuant to adjournment, at the office of E. H. Thomas, Esq., 916 F street, N. W., Washington, D. C.
Present on behalf of the defendant Ann E. J. Cruit, Mr. Thomas.
No appearance on behalf of the plaintiffs.

Whereupon, BENJAMIN S. MINOR, a witness of lawful age, called by and on behalf of the defendant, having been first duly sworn, is examined,

By Mr. THOMAS:

Q. Mr. Minor, tell me in your own way about the negotiations between Miss Cruit and yourself, and between Miss Dean Owen and Mrs. Cugle and yourself, which resulted in the agreement to make a lease, or the making of a lease, with the American national bank. A. Under date of February 20th, 1903, as attorney for and on behalf of the American national bank, a corporation then organizing, I addressed a communication to Miss Emily A. J. Cruit, Mrs. Evanina F. Mackall, Miss Kate Dean Owen and Mrs. Jessie O. Cugle, making an offer on behalf of the said bank for premises No. 610 Fourteenth street, northwest, in the city of Washington (being a part of original lot 16 in square 224), upon the following terms and conditions:

81 1st. A straight lease for said premises for a term of eight years at an annual rental of $1800, payable in monthly installments of $150, in advance, beginning from the date that possession was given; one-half of said monthly rental to be paid over to Miss Emily A. J. Cruit and the other one-half of said monthly rental to be deposited each month in the American national bank as a special deposit, the same to bear interest at the rate of 2 % per annum, and to be held by said American national bank as a special deposit as aforesaid until the termination of the litigation about to be begun for the construction of the last will and testament of the late Robert Cruit, and the determination of the rights of the parties to said suit as to the disposition of the said one-half of said rental income.

2nd. That the said lease should contain a covenant giving the lessee the privilege of making such alterations in said building as may be deemed necessary for the purpose of converting the same into a banking building. The alterations contemplated are as follows: To change the front wall of basement and first floor of said premises, and to insert therein two tall windows and one door, removing all partitions in basement and first floor, and also the joists between the same, thereby throwing what is now known as the basement and first floor and the rear of the building, including the rear area, into one large room. The lessee in making said alterations is to properly support and protect the upper part of the building by

sufficient iron girders and posts, as may be necessary for safety and to prevent damage to the same; and the further right of
82 changing entire front of said building if the lessee shall so desire.

3rd. That said lease should contain a further covenant granting unto the lessee the privilege or subletting and assigning said lease for any part or the whole of said term.

4th. That said lease shall contain a further covenant that all taxes, insurance and repairs to the roof of said building shall be paid by the lessors. The special deposit with the American national bank shall be liable for one-half of said taxes, insurance and repairs.

5th. The said lease shall contain such further covenants as are usual and customary to insert in leases, as to payment of rent, use of premises, surrender of possession of premises in case of breach of covenants, and non-liability of lessee for rent or for damages in case of destruction by fire, public enemy, or the elements, either in whole or in part, whereby the said premises should become untenantable or uninhabitable.

That letter was signed by me as attorney for the American national bank, then organizing, and the parties then organizing the same. I submitted this proposition to the attorneys for the respective parties, to wit, Mr. Thomas as attorney for Miss Cruit, Mr. Brown as attorney for Miss Owen and Mrs. Cugle, and to Mr. William A. Gordon as the attorney for Mrs. Mackall. Mr. Thomas made certain changes in the offer as follows: That the rate of interest on the deposit in the American national bank should be increased from 2% to 4% per annum, and that the second clause of the terms and conditions should read that the cost and expense
83 of making alterations should be borne by the lessee and that the same should cost not less than $1500, and further, that all improvements should become a part of the realty. With those changes as suggested and insisted upon by Mr. Thomas, Miss Cruit accepted the offer in the following terms: "I hereby authorize my attorney, E. H. Thomas, to enter into a lease in accordance with his approval under the terms of this offer." The offer, with the changes suggested and noted by Mr. Thomas, was then presented to Mr. Brown as attorney for Mrs. Cugle and Miss Owen, and Mr. Brown on behalf of his clients insisted that the following clause should be inserted in the lease, to wit: "And that said lessee will pay water rent, gas and electric light bills, and bills for meters and repairs thereto." With this addition on the part of Mr. Brown, the offer was accepted as follows: "Accepted. Jessie Owen Cugle, and Kate Dean Owen."

The offer, as amended by Mr. Thomas, was submitted to Mr. Gordon, and upon his advice the same was accepted and ratified by Mrs. Mackall in the following language: "I hereby approve the foregoing proposal for lease on the terms and conditions therein stated, and will ratify and confirm any lease entered into for said

premises on the terms herein stated that is approved by my attorney. Evanina F. Mackall." In pencil is signed to that the name William A. Gordon.

Thereafter, in pursuance of the proposals as accepted by the parties in interest, I prepared two sets of leases, one to be
84 signed by Miss Cruit and the other by Mrs. Mackall, Mrs. Cugle and Miss Owen. The first set of leases is between Emily A. J. Cruit as party of the first part, and the American National Bank, a corporation, party of the second part, and is dated the 15th day of April, 1903; and contains in substance the provisions as contained in the proposal above stated.

This lease was duly signed by Miss Cruit and Robert N. Harper, as president of the American national bank, and was acknowledged on the first day of May, 1903, before Charles S. Muir, notary public, D. C.

The second set of leases, above referred to, bear date on the 15th day of April, 1903, and are between Mrs. Mackall, Miss Owen and Mrs. Cugle, as parties of the first part and the American National Bank, as party of the second part. This set of leases was submitted to Mr. Chapin Brown, attorney, for the purpose of obtaining the signatures thereto of his clients, but up to this time Mr. Brown has not obtained the signatures nor returned to me the leases, stating to me that he did not consider it necessary, as the offer accepted by his clients was sufficient for all purposes.

Q. You may state, Mr. Minor, whether the bank complied with the conditions imposed upon it about the remodeling of the building? A. It did, sir; and the repairs cost, roughly, between $3,000 and $4,000. I might add that the American national bank has been in possession of the premises, and has occupied the same as a banking house, since the 4th day of May, 1903.

85 Q. Mr. Minor, do you know whether Mr. Thomas, attorney for Miss Ann Cruit, was ever informed, until within a few days, of the fact that no lease had been executed on the part of Mrs. Cugle, and Miss Dean Owen, under the agreement to make a lease? A. My impression is that I so informed Mr. Thomas about a month or six weeks ago. I met you and told you at that time that I had never succeeded in obtaining a lease from Mr. Brown's clients, but that I considered the bank's rights were fully protected, by reason of the fact that Mr. Brown had incorporated in his bill the terms of the agreement which had been executed by our clients, and that we were rightly in possession.

Right to cross-examine this witness is reserved to counsel.

BENJAMIN S. MINOR,
By the Examiner, by Consent of Counsel.

Mr. THOMAS: With the exception of the right hereby reserved to give testimony respecting the estate of Evan Evans, the first husband of Mrs. Owen, and of other property that Mrs. Owen had at the time the will of Robert Cruit was made, I close the testimony.

86 *Stipulation of Counsel.*

Filed December 13, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL., Plaintiffs,
vs.
ANN E. J. CRUIT ET AL., Defendants. } Equity. No. 23948.

It is hereby stipulated and agreed by and between the defendant, Ann E. J. Cruit and the plaintiffs to the above entitled suit that the question as to whether the said Ann E. J. Cruit is entitled to and is to be allowed any commissions on the rents and revenues and income collected by her from the real estate devised by the last will and testament of Robert Cruit deceased, since the death of Catherine E. Owen, to wit: since the 14th day of May, 1901, shall be omitted from the decree to be passed in the above entitled cause, and that the question as to whether or not she is entitled to any such commissions shall be left open to be determined at the time that she may be required to account, if she is so required either by the court or the auditor or the other proper officer.

E. H. THOMAS,
For Ann E. J. Cruit.
CHAPIN BROWN,
For the Complainants.

87 *Decree.*

Filed November 30, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN and JESSIE OWEN Cugle, Plaintiffs,
vs.
ANN E. J. CRUIT, EVANINA F. MACKALL, and American National Bank, Defendants. } In Equity. No. 23948.

Filed Nov. 30, 1904. J. R. Young, Clerk.

Decree.

This cause came on regularly to be heard upon the amended bill of complaint and the answers thereto of all of the defendants and the testimony taken in the cause, and was argued by counsel for the

respective parties and considered by the court; whereupon it is this 30th day of November, A. D. 1904, by the court, adjudged, ordered and decreed: that under the provisions of the will of Robert Cruit, deceased, (a true copy of which is set forth in the bill of complaint) the said plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, were, and are now, entitled to receive one-half of all of the net rents, revenues and income arising from and out of the real estate devised by said last will and testament and mentioned in the bill of complaint, from, since and after the death of their mother, Catherine E. Owen, to-wit: from, since and after the fourteenth (14th) day of May nineteen hundred and one (1901), and being the same proportion of all of the said net rents, revenues and income which their said mother, the said Catherine E. Owen, was entitled to receive at the time of her death; that the said defendant, Ann E. J. Cruit, was and is entitled to receive during her life, from, since and after the said fourteenth (14th) day of May nineteen hundred and one (1901), the other and remaining one-half of said net rents, revenues and income arising from
88 and out of said real estate.

And it is further adjudged, ordered and decreed: that the equitable title in remainder of all of the real estate devised by said last will and testament is now vested in the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, as remaindermen, and their respective heirs; subject to have the said title opened to let in any after born child or children, if any, of the defendant, Ann E. J. Cruit and subject also to the right of the said Ann E. J. Cruit, to receive during her life one-half of the net rents, revenues and income derived from said real estate as hereinbefore decreed, under the provision of said last will and testament.

And it is further adjudged ordered and decreed: that Chapin Brown and Edward H. Thomas be, and they are, hereby appointed trustees under the said last will and testament of Robert Cruit, deceased, in place of Susan Cruit, now deceased, the trustee named therein; said trustees now appointed are to have and to hold all of the said real estate upon the trusts and with all the powers in reference to said real estate provided in said last will and testament and in this decree; and further, that the said trustees be, and they are, hereby required to give either their joint bond, their joint and several bond, or their several bonds, with surety or sureties as the court may approve, to the United States of America, in the penalty of ten thousand ($10,000) dollars, conditioned for the faithful execution of the trust in them reposed; and the said trustees are hereby authorized and directed to let and lease and manage or convey, under the direction of this court, any and all of said real estate devised by said last will and testament of said Robert Cruit, deceased, and mentioned in the amended bill of complaint,
89 and also to collect, receive and receipt for all of the rents, revenues and income arising from and out of said real estate

and after setting aside monthly as near as possible the then proportionate share and amount necessary to meet the current taxes against all of said real estate, the current monthly proportionate share of insurance, repairs and incidental expenses, all of which shall be paid in due course, shall each month distribute and pay the net amount remaining, in equal shares as follows: one-half of said net amount to the said defendant, Ann E. J. Cruit, during her life only; and the other one-half thereof to the said plaintiffs, Kate Dean Owen, and her heirs or assigns, and Jessie Owen Cugle, and her heirs or assigns, and the defendant, Evanina F. Mackall, and her heirs or assigns, that is to say: one-third thereof to each; and after the death of the said Ann E. J. Cruit, then to pay all of said rents, revenues and income to the said remaindermen, Kate Dean Owen, Jessie Owen Cugle and Evanina F. Mackall, or their respective heirs or assigns, until conveyance of said real estate by said trustees to said remaindermen, under the direction and order of this court.

And it is further adjudged, ordered and decreed: that the said defendant, Ann E. J. Cruit, forthwith account to the said trustees for one-half of all the rents, revenues and income heretofore collected and received by her from said real estate devised by the said last will and testament of the said Robert Cruit, deceased, since, from and after the death of the said Catherine E. Owen, to-wit: from the fourteenth (14th) day of May, nineteen hundred and one (1901); and she is hereby restrained and enjoined from further collecting and receiving the said rents, revenues and income; and this cause is hereby referred to the auditor of this court to state the account of the said defendant, Ann E. J. Cruit, of all of
90 said one-half of said rents, revenues and income so received by her, and she is ordered and directed to pay the said one-half of said rents, revenues and income to the said trustees hereby appointed, less allowance to her for payments of taxes, insurance and repairs, that may have been properly made by her; and said trustees are directed upon receipt of said one-half of said rents, revenues and income to forthwith pay the same to the said Kate Dean Owen, Jessie Owen Cugle and Evanina F. Mackall, (one-third thereof to each), as their one-half of the said rents, revenues and income collected by the said Ann E. J. Cruit, less proper charges, allowances, commissions and expenses to said trustees.

And it is further adjudged, ordered and decreed: that the said defendant, American National Bank, pay to the said trustees hereby appointed, the money now on deposit with it, and all accumulated interest thereon, arising from the premises known as No. 610, Fourteenth street, N. W., the said amount when received by the said trustees to be forthwith paid to the said plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, in equal shares, that is to say: one-third thereof to each, less proper charges, allowances, commissions and expenses.

This decree now passed shall not affect the decree heretofore

passed by this court in equity cause No. 21,996, in which Ann E. J. Cruit is complainant, and Catherine E. Owen and others, are defendants, a copy of which last mentioned decree is attached to the amended bill of complaint as Exhibit R. C. No. 2; including that part of said decree which provides that the said Ann E. J. Cruit "shall at her pleasure during her natural life remain in the sole undisturbed possession of premises No. 1409, F street, N. W., in the city of Washington, District of Columbia, where she now resides, paying for the use and occupation thereof from the
91 death of the said Susan Cruit at the rate of thirty seven 50/100 ($37.50) dollars monthly to the trustees hereby appointed for the sole use of the defendant, Catherine E. Owen, so long as said Catherine lives and said occupation of said complainant continues; the said $37.50 being at the rate of $75.00 per month, the rental value thereof, the other one-half share belonging to complainant," the said Ann E. J. Cruit. The costs of this suit to be paid by the defendant, Ann E. J. Cruit.

By the court:

THOS. H. ANDERSON, *Justice.*

92 Supreme Court of the District of Columbia.

KATE DEAN OWEN, JESSIE OWEN CUGLE *vs.* ANN E. J. CRUIT ET AL. } Equity. No. 23948.

The clerk will please enter this appeal of the defendant Ann E. J. Cruit, to the Court of Appeals from the decree passed November 30, 1904 and issue citation.

Dec. 2, 1904.

E. H. THOMAS,
For Said Defendants.

Appeal entered and citation issued to complainants.
Dec. 2, 1904.

BY CLERK.

93 In the Supreme Court of the District of Columbia.

KATE DEAN OWEN and JESSIE OWEN Cugle
vs.
ANN E. J. CRUIT, EVANINA F. MACKALL, and American National Bank.
No. 23948. In Equity.

The President of the United States to Kate Dean Owen and Jessie Owen Cugle, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein, under and as directed by the rules of said court, pursuant to an appeal entered in the supreme court of the District of Columbia, on the 2d day of December, 1904, wherein Ann E. J. Cruit is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Harry M. Clabaugh, chief justice of the supreme court of the District of Columbia, this second day of December in the year of our Lord one thousand nine hundred and four.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Service of the above citation accepted this 10th day of December, 1904.

CHAPIN BROWN,
Attorney for Appellees.

[Endorsed:] 10. No. 23,948. Equity. Kate Dean Owen *et al. vs.* Ann E. J. Cruit *et al.* Citation. Issued Dec. 2, 1904. Served cop- of the within citation on —— ——. —— ——, marshal. E. H. Thomas, attorney for appellant.

94 *Consent of American National Bank to Severance.*

Filed December 15, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL.
vs.
ANN E. J. CRUIT ET AL.
Equity. No. 23948.

The defendant The American National Bank hereby consents that the defendant Ann E. J. Cruit may have a severance and separately

prosecute her appeal to the Court of Appeals from the decree entered in this cause.

BERRY & MINOR,
Attorney- for Def't American Nat'l Bank.

Order Allowing Severance.

Filed December 16, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL.
vs.
ANN E. J. CRUIT ET AL. } Equity. No. 23948.

This cause coming on to be heard on the motion of counsel for the defendant Ann E. J. Cruit for leave to prosecute separately her appeal heretofore taken in this cause and the consent of the defendant The American National Bank filed in this cause, and notice to and appearance of defendant Evanina Mackall now in open
95 court by her counsel, it is this 16th day of December, 1904, ordered that the said defendant Ann E. J. Cruit be and she is hereby granted a severance on her said appeal and whereby allowed to prosecute her said appeal when taken and perfected and any other appeal in this cause separately she may hereafter take.

THOS. H. ANDERSON, *Justice.*

Memorandum.

December 17, 1904.—Appeal bond filed.

Designation of Record on Appeal.

Filed December 27, 1904.

In the Supreme Court of the District of Columbia.

KATE DEAN OWEN ET AL.
vs.
ANN E. J. CRUIT (Appellant). } Equity. No. 23948, Doc. 53.

To the clerk of the supreme court of the District of Columbia:

The appellant hereby designates the following parts of the
96 record to be included in the transcript of record to be transmitted to the Court of Appeals on the appeal taken and perfected in this cause:

1. Amended bill filed Dec. 31, 1903.

2. Answers of defendants (three) to amended bill.
3. Depositions taken in behalf of parties.
4. Stipulation of counsel filed Dec. 13, 1904.
5. Decree passed Nov. 30, 1904.
6. Severance consent of defendant American National Bank.
7. Order allowing defendant Ann E. J. Cruit separate appeal.
8. All necessary memoranda of docket entries, citation on appeal, acceptance of service, bond and approval thereof.

E. H. THOMAS,
Solicitor for Ann E. J. Cruit.

Service of copy made this 27th day of December, 1904, on Chapin Brown in person.

E. H. THOMAS.

97 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 96, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 23,948, equity, wherein Kate Dean Owen *et al.* are complainants, and Ann E. J. Cruit *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 13th day of January, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1506. Ann E. J. Cruit, appellant, *vs.* Kate Dean Owen *et al.* Court of Appeals, District of Columbia. Filed Jan. 14, 1905. Henry W. Hodges, clerk.

MONDAY, *April 17th, A. D.* 1905.

No. 1506.

ANN E. J. CRUIT, Appellant,
vs.
KATE DEAN OWEN and JESSIE OWEN CUGLE.

The argument in the above entitled cause was commenced by Mr. E. H. Thomas, attorney for the appellant, and was continued by Mr. Chapin Brown, attorney for the appellees.

TUESDAY, *April 18th, A. D.* 1905.

No. 1506.

ANN E. J. CRUIT, Appellant,
vs.
KATE DEAN OWEN and JESSIE OWEN CUGLE.

The argument in the above entitled cause was continued by Mr. Chapin Brown, attorney for the appellees, and was concluded by Mr. E. H. Thomas, attorney for the appellant.

No. 1506.

ANN E. J. CRUIT, Appellant,
vs.
KATE DEAN OWEN and JESSIE OWEN CUGLE.

Opinion.

Mr. Justice DUELL delivered the opinion of the Court:

This appeal involves the correctness of the construction by the court below of the will of one Robert Cruit, who died November, 1861, leaving him surviving a wife, Catherine Cruit, and four daughters, Catherine E., then the wife of Samuel Owen, and three unmarried daughters, Susan, Ann, and Louisa. The will, executed September 1, 1858, was duly admitted to probate, and Susan, to whom the estate was left in trust for certain purposes which will be hereafter stated, entered upon the administration of the estate and had charge of the same until her death, which occurred December 31, 1900. The widow died May 13, 1876; Louisa died January 2, 1876, and Catherine E. Owen died May 14, 1901. Susan and Louisa never married, nor has Ann up to the present time. Catherine E. Owen left her surviving three daughters, Evanina F. Mackall and these appellees, Kate D. Owen and Jesse Owen Cugle.

The will, in respect to which the controversy has arisen, is as follows:

"This is the last will and testament of me, Robert Cruit, of the city of Washington in the District of Columbia.

"First I give to my two nephews Edwin Cruit the son of George, and Henry the son of John L. Cruit, the legacy of one hundred dollars, to each of them, to be paid as soon after my death as may be. And all the rest residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever situated, I give devise and bequeath unto my dear daughter Susan Cruit her heirs executors and administrators upon the following trusts to wit In trust for my dear wife Catherine for and during her life, and to permit her to receive and take the whole income thereof after paying taxes repairs and insurance, and to apply and dispose of such net income as she my said wife may think proper and from and after her decease, in trust, as to my real estate for my dear daughters Catherine E. the wife of Samuel Owens, Ann Cruit, Louisa Cruit, and herself the said Susan Cruit, equally share and share alike, for and during their respective lives, for their own sole and separate benefit, free from the control of the husband of my said daughter Catherine and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not to be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge And from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her or their parent was entitled And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner, and for the same estate and pass on her or their death, as her or their original shares or share. And as to my personal property, also given in trust as above expressed, I direct that the same shall, after the death of my said wife, be divided equally among all my said children, Catherine, Susan, Ann and Louisa share and share alike, and I accordingly give the same to them as aforesaid for their own sole and separate use.

"And lastly I appoint my said daughter Susan Cruit sole executrix of this my last will and testament. And if my said daughter shall die or from any cause should become unable to act in the trust, I direct, that a trustee shall be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect.

In testimony whereof I have hereunto set my hand and seal this first day of September in the year one thousand eight hundred and fifty eight.

ROBERT CRUIT. [L. S.]"

The present value of the real estate is admitted to be over $100,000, and produces an income of some $11,000 or $12,000. The cause was heard upon the amended bill and the answers thereto of all of the defendants, and upon certain testimony which is of little or no value as an aid to the decision of the questions involved on the appeal. The court below decreed that under the terms of the will, the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and

the defendant, Evanina F. Mackall, were, and are now, entitled to receive one-half of all of the net rents, revenues and income arising from and out of the real estate devised by said last will and testament and mentioned in the bill of complaint, from, since and after the death of their mother, Catherine E. Owen, to wit, from, since, and after the fourteenth (14th) day of May, nineteen hundred and one (1901), and being the same proportion of all of the said net rents, revenues, and income which their said mother, the said Catherine E. Owen, was entitled to receive at the time of her death; that the said defendant, Ann E. J. Cruit, was and is entitled to receive during her life, from, since, and after the said fourteenth (14th) day of May nineteen hundred and one (1901), the other and remaining one-half of said net rents, revenues, and income arising from and out of said real estate, and that the equitable title in remainder of all of the real estate devised by said last will and testament is now vested in the plaintiffs, "Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, as remaindermen, and their respective heirs; subject to have the said title opened to let in any after-born child or children, if any, of the defendant, Ann E. J. Cruit, and subject also to the right of the said Ann E. J. Cruit to receive during her life one-half of the net rents, revenues, and income derived from said real estate as hereinbefore decreed, under the provision of said last will and testament."

The decree also appointed trustees under the will in place of Susan Cruit, deceased, the trustee named therein, and enjoined the appellant from thereafter collecting and receiving the rents and income of and from the property. Ann E. J. Cruit appealed, assigning the following grounds of error:

"1. The court below erred by its decree that under the provisions of the will of Robert Cruit the said Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall were and are from the death of Catherine E. Owen entitled to receive one-half of the net rents, revenues, and income arising from and out of the real estate, devised by said last will and testament, and in not decreeing that the appellant was entitled to the whole of said rents, revenues, and income.

2. The court below erred in not construing said will so that from and after the death of her sister, Catherine E. Owen, the appellant became entitled to receive no more than one-half of the said net rents, revenues, and income.

3. The court below erred in not holding that Ann E. J. Cruit had an estate in fee simple in said real estate to the extent, at least, of one undivided half thereof.

4. The court below erred in its decree by placing the share and estate of the appellant in said real estate in the hands of trustees, as in said decree provided, and in its injunction against the appellant as in said decree contained.

5. The court below erred in requiring the appellant in this cause to account for and pay one-half of the rents which she may have collected since the death of Catherine E. Owen, prior to the appointment of said trustees, to them or to any person, and in distributing said rents as provided in said decree."

The parties are in accord in stating that the intent of the testator is the first and great rule in the interpretation of wills. All courts have for years recognized this rule, and this court since its inception has followed it. Smith *v.* Bell, 6 Peters, 68; Adams *v.* Cowen, 177 U. S. 471; Earnshaw *v.* Daly, 1 App. D. C. 21; De Vaughn *v.* De Vaughn, 3 Apps. D. C. 53; Holcomb *v.* Wright, 5 Apps. D. C. 83. Particularly applicable to the case at bar is the statement of the Supreme Court in Blake *v.* Hawkins, 98 U. S. 315-324, quoted by counsel for the appellant, that—

"It is a common remark that, when interpreting a will, the attending circumstances of the testator, such as the condition of his family, and the amount and character of his property, may and ought to be taken into consideration. The interpreter may place himself in the position occupied by the testator when he made the will, and from that standpoint discover what was intended."

Let us, then, put ourselves as nearly as possible in the position of the testator at the time of the execution of the will and review the facts and surrounding circumstances, and little trouble will be found in fairly and correctly construing his will. In the fall of 1858 the testator was the owner of valuable real estate situated in the capital city of a rapidly growing country. His family consisted of his wife and four daughters, three of whom were unmarried, and the fourth then living with her second husband and being the mother of two female children. Naturally it was his desire to provide for his wife, his daughters, and such children as they had or might have. Such is the desire of every right-minded man bearing the relation to others of husband, father, and grandfather. There is no reason for inferring that any but the most loving relations existed between him and the various members of the family, for he refers to all whom he specifically names in the ordinary terms of endearment. His property consisted largely of real estate situated in a section of the city which required no more than ordinary foresight to see would naturally increase in value as the city grew, as the capital city of a great and growing nation necessarily must. The growth and consequent increase in value might be slow, but it was sure. Furthermore, all those living to whom he owed a natural duty were females. One was married, and for her husband it is easily spelled out that he did not wish him to have any control over the property. The other three daughters might marry and of their possible husbands he could know nothing. Such were "the condition of his family and the amount and character of his property." What would be the natural disposition of his property? What would any well-minded man do with real estate so situated, with a living wife and descendants, all of the female sex, three of his daughters unmarried and the daughters of the married daughter infants? Certainly he would desire to provide for his wife an ample support and leave her as the head of the family, to whom the children would look for their support, the grandchildren, such as there were or might be, in turn looking to their mothers for their support. Seeing the probable enhancement of value of the real estate and in order to prevent a dissipation of the property, and to make a provision for the support of all, with homes in the city and

country, he would tie up the real property so that all of these objects might be secured. He would, in carrying out these objects, provide that the husband of the married daughter, and the possible husbands of the unmarried ones, should have no control over or rights in any of his property. He would vest a life interest in the income of his property for his wife and daughters with a remainder over to any grandchildren, so that the real property might go intact to them, and not by wills made by any of his daughters pass into alien hands.

It is the contention of the appellees that such was the intention of their grandfather, and that the will clearly sets forth such intention. The court below substantially so found and it becomes our duty to determine whether, in our opinion, such contention and decision are correct.

In considering the questions involved, we must, as we said in De Vaughn *v.* De Vaugh, *supra*, "read the whole will together, and give to each term employed its full and natural meaning; and no words of the testator should be rejected or refused their sensible meaning in the place where employed, unless it be required to make sense for the context of the will."

Turning now to the will, it is plain, as is admitted by all the parties, that the real estate passed in trust to the daughter Susan, who was to pay the net income to the testator's widow Catherine, who had the undisputed right to dispose of it as she saw fit; that at her death, which occurred in May, 1876, the income was to be paid, share and share alike, to the surviving daughters. Louisa having died the previous January, unmarried and without children, the net income would be divided in three parts and this would continue until the death of another daughter. Such event occured December 31, 1900, when Susan, also without children and unmarried, died. From that time on the net income would be divided in two parts, one going to Mrs. Catherine E. Owen and the other to the appellant. May 14, 1901, Catherine E. Owen died, leaving her surviving three daughters, who took their mother's share, which at that time was one-half of the net income. It seems to us that it could not have been the intent of the testator that, after the condition had arisen under which one daughter was clearly entitled to one-half of the net income, upon her death her surviving children should not take her entire interest. It was not the testator's intention, as we gather it from the will, that upon the happening of that event, one-half of the net income received by the deceased daughter should revert to her surviving sister and only the other half (or one-fourth of the entire net income) go to her surviving children. We think it requires a strained construction to be placed upon the words of the will to force any such conclusion. The clause, "And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner, and for the same estate, and pass on her or their death as her or their original shares or share," is unambiguous and can but mean one thing. That is, that when Louisa died, without issue, her interest passed to Susan, Ann, and Catherine; that when Susan died, without issue, her inter-

est passed to Ann and Catherine; and that when Catherine died, leaving surviving children, her then interest, which was a one-half interest, passed to such children. To hold otherwise would defeat the intent of the testator as indicated by clear and apt words.

The plea of counsel for the appellant that the testator intended to give to the child or children of any married daughter the original share of such daughter had all the daughters survived the widow, and not the share that such married daughter was enjoying at the time of her death, is one that fails to impress us as being founded on anything but a technical nicety. The intent of the testator is to be gathered from a fair and reasonable interpretation of the language of the will. Thus, considering the terms employed, they mean that the entire interest of every nature that was vested in Catherine Owen at the time of her death passed to her daughters. It is only when an attempt is made to give a technical meaning to the word "their," as used in the phrase "their death," in the clause preceding the one we have quoted, that any difficulty of construction can arise. It is giving it a too technical meaning to construe it, when taken in connection with the following clause of the will, to mean that it refers to the death of all rather than to the death of each respectively. The testator was dealing with a known condition and not with a theory. He was employing ordinary words with their natural import, and not expecting that one word here and another there would be picked out and used to destroy his intention, as evidenced by taking the will as a whole. It is only when ultra refinement of expression is insisted upon that any ambiguity arises, and it naturally follows that when the construction of the will is approached from that standpoint that a half dozen interpretations can be placed upon it, as insisted by counsel for the appellant. We see no need, in construing this will, to wander afield and become lost in a maze. Nor does it seem necessary for us to cite authorities or distinguish between conflicting, or seemingly conflicting, decisions in order to arrive at a correct decision. Approached from a common-sense standpoint, the intent of the testator is clear and is as found by the court below.

Equally clear is it, in our opinion, that there is at the present time a trust estate, and that under the will it was the duty of the court below to appoint a trustee to take the place of Susan, the will expressly providing for such appointment when it directs, "And if my said daughter shall die, * * * I direct that a trustee shall be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect."

The assigned grounds of error are not well founded. It follows that the court below having made no error in its decree, it should be affirmed, with costs, and it is so ordered.

Affirmed.

TUESDAY, *May 9th, A. D.* 1905.

No. 1506. April Term, 1905.

ANN E. J. CRUIT, Appellant,
vs.
KATE DEAN OWEN and JESSIE OWEN CUGLE.

Appeal from the Supreme Court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. JUSTICE DUELL.

May 2, 1905.

TUESDAY, *May 9th, A. D.* 1905.

No. 1506.

ANN E. J. CRUIT, Appellant,
vs.
KATE DEAN OWEN and JESSIE OWEN CUGLE.

On motion of Mr. E. H. Thomas, attorney for the appellant in the above entitled cause, it is ordered by the Court that said appellant be allowed an appeal to the Supreme Court of the United States, and the bond for costs is fixed at the sum of three hundred dollars.

Bond on Appeal.

Know all men by these presents, That we, Ann E. J. Cruit, as principal, and W. A. Copenhaver, as surety, are held and firmly bound unto Kate Dean Owen and Jessie Owen Cugle in the full and just sum of Three hundred dollars, to be paid to the said Kate Dean Owen and Jessie Owen Cugle their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of May, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a Court of Appeals of the District of Columbia in a suit depending in said Court, between Ann E. J. Cruit, Appellant and Kate Dean Owen and Jessie Owen Cugle a decree was rendered against the said Ann E. J. Cruit and the said Ann E. J. Cruit having prayed and obtained an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to the said Kate Dean Owen and Jessie Owen Cugle

citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now, the condition of the above obligation is such, That if the said Ann E. J. Cruit shall prosecute said appeal to effect, and answer all costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

ANN E. J. CRUIT. [SEAL.]
W. A. COPENHAVER. [SEAL.]

Sealed and delivered in the presence of
T. W. WIDDICOMBE.

I consent to the approval of the above bond for costs.

CHAPIN BROWN,
For Appellees.

May 16/05.

Approved by
SETH SHEPARD,
Chief Justice Court of Appeals of the District of Columbia.

This bond is O. K. & satisfactory to me.

CHAPIN BROWN,
For Appellees.

May 20/05.

[Endorsed:] No. 1506. Bond on Appeal to Supreme Court, U. S. Court of Appeals, District of Columbia. Filed May 20, 1905. Henry W. Hodges, Clerk.

UNITED STATES OF AMERICA, *ss:*

To Kate Dean Owen and Jessie Owen Cugle, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to an order allowing an appeal, filed in the Clerk's Office of the Court of Appeals of the District of Columbia, wherein Ann E. J. Cruit is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the appellant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Seth Shepard, Chief Justice of the Court of Appeals of the District of Columbia, this twentieth day of May, in the year of our Lord one thousand nine hundred and five.

SETH SHEPARD,
Chief Justice of the Court of Appeals of the District of Columbia.

Service accepted May 20/05.

CHAPIN BROWN,
For Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 20, 1905. Henry W. Hodges, Clerk.

Court of Appeals of the District of Columbia.

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 61 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Ann E. J. Cruit, Appellant, *vs.* Kate Dean Owen and Jessie Owen Cugle No. 1506, April Term, 1905, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 31st day of May A. D. 1905.

[Seal Court of Appeals, District of Columbia.]

HENRY W. HODGES,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 19,806. District of Columbia Court of Appeals. Term No. 304. Ann E. J. Cruit, Appellant, *vs.* Kate Dean Owen and Jessie Owen Cugle. Filed June 17th, 1905. File No. 19,806.

FILE COPY.

Office Supreme Court, U. S.
FILED.
OCT 19 1906
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 51.

ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLANT.

EDWARD H. THOMAS,
For Appellant.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

No. 51.

ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLANT.

Statement of the Case.

The appeal of Ann E. J. Cruit, who is a single woman about 72 years of age, in this case is from a decree of the Court of Appeals of the District of Columbia passed on the 2d day of May, 1905 (Record, page 61), which affirmed a decree of the Supreme Court of the District of Columbia (Record, pages 48, 49, 50, and 51). The construction will of Robert Cruit, who died in November, 1861 (see bill, Record, page 2), and an accounting thereunder by the appellant, are the subjects involved.

This will was executed on the 1st day of September, 1858 (see copy of will, Rec., pp. 2 and 3), and was admitted to probate in December, 1861 (see answer of appellant, Record, top of page 13). When the will was made the testator's wife, Catherine Cruit, and his four daughters, Catherine E. Owen, wife of Samuel Owen, and his single daughters, Susan, Ann (the appellant),

and Louisa were living. The appellees are the children of the testator's married daughter, Catherine, who was twice married, first to Evan Evans, and the issue of that marriage was Evanina F. Mackall, born May 22, 1848. After the death of her first husband, Evan Evans, the testator's daughter married Samuel Owen, and the appellees, Kate Dean Owen, born May 1, 1855, and Jessie Owen Cugle, born November 1, 1865, are the children of the latter marriage.

The appellees, Evanina F. Mackall and Kate Dean Owen, were both living when the will was made, and they and their mother, Catherine E. Owen, and the testator's wife and his three single daughters, Susan, Ann (the appellant), and Louisa survived him, and none of the daughters, Catherine excepted, ever married. The testator's wife, Catherine Cruit, survived him, dying in her eightieth year, on the 13th day of May, 1876 (Rec., p. 6, amended bill). Louisa Cruit died on the 2d day of January, 1876; Susan Cruit died the 31st day of December, 1900, and Catherine E. Owen died the 14th day of May, 1901 (see amended bill, Record, page 4).

The testator makes no mention by name in his will of his grandchildren, the appellees Mackall and Owen, although they were then living, but he does refer therein by name to his "dear wife Catherine," and to his " dear daughters, Catherine E., the wife of Samuel Owen, Ann Cruit, Louisa Cruit, and herself, the said Susan Cruit." It will also be noted that in this will the testator by name mentions his son-in-law, Samuel Owen, and that he provides that his real and personal estate shall, after the death of his wife (without consideration now of the other provisions of the will) belong to his daughters, for their own sole and separate use, free from the control etc., of their husbands.

No replication was filed to the answer of the appellants nor to the answers of any of other parties to the cause.

The cause proceeded to decree on "the amended bill of complaint and the answers thereto of all of the defendants and the testimony taken in the cause" (Rec., bottom of page 48):

> "It is admitted that the actual value of the real estate embraced in this cause is above the sum of $100,000" (Rec., bottom of p. 24).

The bill alleges (Rec., top of p. 5) that the "property is now under rental and produces an income of between $11,000 and $12,000 annually." The answer says (Rec., p. 13) that the gross income thereof for the year 1903 was $10,989, but says:

> "When the said Robert Cruit died the gross income of the same did not amount to $3,000 annually, but by the care, attention given, and the improvements made thereon by this defendant and her deceased sister, Susan T. Cruit, the rentals have increased as aforesaid."

The answer further says (Rec., middle of p. 18):

> "That respondent's mother and sisters, excepting the said Catherine E. Owen lived together after the death of said Robert Cruit, until by death your respondent has been and now is left alone, and ever after her father's death, until her death, which occurred on the 31st day of December, 1900, the said Susan Cruit and respondent lived in harmony and devoted their energies to preserving their deceased father's estate, expending out of their share of the income thereof the necessary moneys to erect new buildings and improve the old ones thereon, resulting in increasing the annual income of the estate from one of modest size to its present proportions."

The real estate involved is located in the city of Washington and in the State of Virginia. The city real estate is situated on the north side of F street northwest, be-

tween Fourteenth and Fifteenth streets, nearly of the whole of the frontage on the west side of Fourteenth street northwest, between F and G streets, and considerable frontage on the south side of G street northwest, between Fourteenth and Fifteenth streets. These holdings are separated only by the Wyatt Building, which is located at the northwest corner of Fourteenth and F streets northwest. Paragraph 3 of the amended bill (Record, page 2) contains a description thereof, and this description is admitted in the answer of the appellant (Record, top of page 13).

The real estate situated in the State of Virgina, is thus described in paragraph 5 of the bill:

> "Property in the State of Virginia, in the county of Alexandria, being a farm, consisting of about two hundred acres, improved by farmhouses and outbuildings, which is not at present under any specified or agreed rental, but which farm and farmhouses and outbuildings the said Ann E. J. Cruit (appellant) took, or assumed possession of, after the death of her sister, Catherine E. Owen, one of the daughters of the said Robert Cruit, deceased, who died on the 14th day of May, 1901" (Record, page 4).

The answer of the appellant in reply states:

> "The said farm in the State of Virginia comprises about two hundred and six (206) acres improved, less five or six acres taken off for roads, subject to annual taxes of $384.58, and other expenses, amounting to about $650.
>
> "This defendant further answering says that by agreement made after the death of Susan T. Cruit, on behalf of the said Catherine E. Owen in her lifetime, and the said complainants, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, with this defendant, this defendant was to remain in sole charge and custody of said farm, accounting to her sister Catherine

E. Owen for the produce thereof, as was formerly done in the lifetime of said Susan T. Cruit.

"This defendant and the said Catherine E. Owen, accordingly, during her lifetime, divided the net produce left between them, and since the death of said Catherine this defendant continued the same practice with the complainant, Kate Dean Owen, until some time ago she refused to receive the same; but this defendant has never excluded any of them, said complainants and said defendant Evanina F. Mackall from said farm, and the same has never been a source of profit to this defendant, nor has any demand been made upon her to rent or let the farm" (Record, page 13).

The amended bill also alleges (Record, page 5):

"6. That notwithstanding the fact that the said plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, are now entitled, as above set forth, to one-half of the net income derived from the above-mentioned property, and also entitled to the equitable fee-simple title of the above-described real estate, as above set forth, yet the said defendant, Ann E. J. Cruit, has collected and received and is collecting and receiving all of the rents and revenues derived therefrom since the death of the said Catherine E. Owen, and claims that she is entitled, notwithstanding the provisions of the said will of the said Robert Cruit, deceased, to all of said income from said property."

The answer of the appellant thereto states (Record, page 14):

"6. Answering the 6th paragraph of said amended bill this defendant says that so soon as she was advised that the complainants claimed that under proper construction of the said will of Robert Cruit, her father, they and the defendant, Evanina F. Mackall, were entitled to one-half of the net income of said property, this defendant segregated

one-half thereof and has kept the same to await the judicial interpretation of said will and always has, since said property has been in her charge, kept the same insured and in good order, repair, paid the taxes and faithfully and diligently collected the rents thereof and by her conduct of the said estate, has conserved and benefitted it. This defendant further says that since the death of the said Catherine E. Owen, the taxes on said real estate have been increased and that she has required an increase of rents to meet the same from tenants, which most of them have paid. This defendant does not claim, notwithstanding the provisions of said will of the said Robert Cruit, she is entitled to all of said net income from said property, but she does claim the same during her lifetime under and by virtue of said will, and she denies every conclusion of law to the contrary asserted in said amended bill."

The only matter respecting an accounting which is taken away from the claim of the appellant to the whole rental during her life by agreement of the parties, and which is made the subject of any adverse construction to her claim of what is the true meaning of this will is set forth in paragraph 7 of the amended bill, as follows (Record, page 5):

"7. The plaintiffs further state, that recently, to wit: on the 20th day of February, 1903, an agreement was entered into between the said defendants Ann E. J. Cruit, under the name and style of Emily A. J. Cruit, and Evanina F. Mackall, under the name and style of Nina F. Mackall, and the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, with Benjamin S. Minor as attorney for the defendant, The American National Bank, then organizing, by which it was agreed to lease to the said, The American National Bank, defendant herein, a portion of the above-described property, to wit: premises known as No. 610 14th street, N. W., for the term of eight years, at

the yearly rental of eighteen hundred dollars ($1,800.00), payable in monthly instalments of $150.00 per month. One-half of said monthly rental to be paid over to the said defendant, Ann E. J. Cruit, under the name and style of Emily A. J. Cruit, and the other one-half of said yearly rental to be deposited each month in the American National Bank as a special deposit, the same to bear interest at the rate of four per cent (4%) per annum, and to be held by the said The American National Bank as a special deposit as aforesaid, until the termination of the litigation which is to be instituted by the filing of this bill in equity for the construction of the last will and testament of the said Robert Cruit, deceased, and the determination of the rights of the parties to this suit as to the disposition of said one-half of said yearly income, all of which will more fully appear by copies of said written agreement, in two parts, signed and accepted by the parties to this suit, and marked 'Exhibit R. C., No. 1,' and filed along with the original bill in equity and prayed to be read as and made a part of this amended bill."

Exhibit R. C., No. 1, is not a part of the record, but it is believed its provisions are substantially as above stated. It was because of this agreement that the American National Bank was made defendant in this cause. The allegations of the amended bill respecting this matter are in substance admitted in the answer of appellant (Record, page 14).

The 8th paragraph of the amended bill avers (Record, page 9):

> "That after the death of the said Robert Cruit, the said Susan T. Cruit, mentioned in his last will and testament as Susan Cruit, entered upon her active duties as trustee and continued to so act as such trustee up to and until her death, which occurred on the 31st day of December, A. D. 1900. In the execution of these trusts, she collected the rents and income derived from the various

tenants of said real estate; . . . and after paying such taxes, repairs, and insurance, paid over to the several beneficiaries under said last will and testament, the net income derived from said real estate; that is to say, to the said wife and widow, Catherine, of the said Robert Cruit, deceased, during her life, and up to and until the death of said wife and widow, Catherine . . .

"That from and after the death of the said wife and widow, Catherine, the said Susan T. Cruit, as trustee, continued to collect the said income from said real estate, and after paying therefrom the said taxes, repairs and insurance, she, the said Susan T. Cruit, trustee, paid the net income to the several daughters then living of the said Robert Cruit, deceased, equally, share and share alike, to wit: one-third of said net income to the said Catherine E. Owen, one-third thereof to the said Ann E. J. Cruit, defendant, and one-third thereof to herself, the said Susan T. Cruit. That after the death of the said Susan T. Cruit, trustee, to wit: on the 17th day of January, 1901 (during the lifetime of Catherine E. Owen), the said defendant, Ann E. J. Cruit, filed her bill in equity in this honorable court and numbered on the equity docket in the clerk's office, 21,996, against the said Catherine E. Owen (now deceased), Evanina F. Mackall, defendant herein, Kate Dean Owen, defendant herein, and Jessie Owen Cugle, defendant herein, praying for the appointment of a trustee or trustees, to act in the management of said real estate in place of said Susan T. Cruit, trustee, deceased, and on the same day (January 17, 1901) a decree was passed by this honorable court in said last mentioned cause, settling the accounts of the said Susan T. Cruit, deceased, as trustee, and appointing the said Ann E. J. Cruit, defendant herein, and Chapin Brown, as joint trustees to manage said real estate." . . .

Exhibit R. C., No. 2, is copy of this decree (Record pages 9 and 10). This decree provides:

That during the joint lives only of Ann E. J. Cruit

and Catherine E. Owen, said Ann and Chapin Brown are made trustees under this will. It continues:

> "And it is further adjudged, ordered and decreed that the estate of the trustee Susan Cruit to the time of her death be, and the same is, hereby absolved from any accounting to the said trustees and any of the parties interested herein, excepting only as to the sum of fifteen hundred and ninety-six and 83-100 ($1596.83) dollars now on deposit in her name in the National Metropolitan bank, which said sum the said trustees are hereby authorized to collect from the personal representative of the estate of said Susan Cruit and when collected shall apply the same towards the payment of the taxes accruing on the real estate of the said Robert Cruit, deceased.
>
> "And the said trustees are hereby authorized and directed to collect the income of their said trust estate as near as may be monthly and after setting aside monthly the then proportionate share and amount necessary to meet the current taxes against said estate, the current monthly proportionate share of insurance, repairs, and incidental expenses, all to be paid in due course; shall each month distribute and pay the remainder in equal shares to the complainant and the defendant Catherine E. Owen during the existence of this trust; but the complainant shall at her pleasure during her natural life remain in the sole undisturbed possession of premises No. 1409, F street, N. W., in the city of Washington, District of Columbia, where she now resides, paying for the use and occupation thereof from the death of the said Susan Cruit at the rate of thirty seven 50/100 ($37.50) dollars monthly to the trustees hereby appointed for the sole use of the defendant, Catherine E. Owen, so long as said Catherine lives and said occupation of said complainant continues; the said $37.50 being at the rate of $75.00 per month, the rental value thereof, the other one-half share belonging to complainant."

The appellant answered (Record, pages 14 and 15):

"8. This defendant admits that after the death of said Robert Cruit, the said Susan T. Cruit, entered upon her duties as trustee, but she denies that said Susan T. Cruit continued so to act up to and until her death. Whether said Susan T. Cruit continued to receive and disburse the income of said estate as trustee under said will after the death of their mother Catherine Cruit, is, this defendant is advised, a question of law, which is incorrectly set forth and asserted in said amended bill so this defendant is advised. There was no contract or agreement with or without consideration by which said Susan T. Cruit as trustee under said will collected and disbursed said income after the death of their mother Catherine Cruit. On the contrary this respondent says that the duties of said Susan T. Cruit were those of agent for her sisters when they became possessed of their right to the income of said estate. This defendant is also advised that however the parties may have regarded the said Susan T. Cruit after the death of said Catherine Cruit, that such action on their part is of no importance and of no legal effect upon the proper construction of said will and she therefore excepts and objects to said paragraph as though she had formally demurred thereto."

. . . . . .

"The plaintiffs then threatened to institute proceedings for a receiver and to take away every control of this defendant over said property and finally as a compromise without consideration of the construction of the said will respecting events to happen beyond the lifetime of said Cahtherine E. Owen, it was agreed that this defendant file said bill, and inasmuch as it was unjustly claimed and represented by complainants that her sister, Susan T. Cruit, was indebted to said Catherine E. Owen and had not properly accounted for said income and that it was necessary that the same should be settled, while in fact the said Catherine E. Owen owed to defendant one-half of the sum

of $930, which she had overdrawn from said income, the said bill was drawn and filed after mutual consultation of counsel for both parties, and said decree by agreement was passed to avoid litigation and an application for a receiver.

"Said decree accordingly, because of the said agreement of the parties, and the desire of this defendant to avoid litigation provided that the estate of said Susan T. Cruit be absolved from any accounting to the parties interested excepting as to the sum of $1,596.83 then on deposit in bank in her name, and which had been so placed by her for the purpose of paying taxes, and which sum was received and the same was applied to said taxes. The said decree, as part of said agreement, also provided (and is now in full force respecting the same as against the devisees under the will of Robert Cruit) that this defendant shall at her pleasure, during her natural life remain in the sole undisturbed possession of premises No. 1409 F street N. W. in the city of Washington, where she now resides, paying for the use and occupation there from the death of the said Susan T. Cruit, at the rate of $37.50 monthly. The said bill was not intended as a bill for the construction of said will nor was the question of its construction or the merits of this cause, now raised, considered by the parties or passed upon by the court."

The bill included prayers for an account by the appellant of rents received by her since the death of Catherine E. Owen, and that one-half of the same and one-half of the rental value of the farm since the said death be turned over to Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall, for construction of the will as claimed by complainants, and for appointment of trustees under the will. The answer claimed that as to the estate of the appellant it was discharged of every trust and denied the right of the co-tenants to require her to account for the rents which she has received while dis-

claiming any intent to deprive them of what might be due them (Record, page 21).

Except testimony denying that part of the answer of the appellant which states that her former co-trustee notified tenants not to pay rent to her after the death of her sister Catherine E. Owen (Record, page 26), it is believed that there is no evidence contrary to the matters of fact set forth in the appellant's answer. This contradiction is unimportant, because the disputed fact is unimportant.

There are admissions of fact (Record, pages 24, 25 and 26) in harmony with the undisputed matters of fact contained in the bill.

It is, therefore, believed that a review of the testimony which is not contrary to the answer is unnecessary. The decree (Record, pages 48, 49, 50, and 51) construed the will in accordance with the contention of the complainants and declared plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant Evanina F. Mackall, entitled to one-half of the net rents of said real estate from the 14th day of May, 1901, and that the other one-half of the rents from said date remained to the appellant.

The decree proceeded:

> "And it is further adjudged, ordered and decreed: That the equitable title in remainder of all of the real estate devised by said last will and testament is now vested in the plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, as remaindermen, and their respective heirs; subject to have the said title opened to let in any after born child or children, if any, of the defendant, Ann E. J. Cruit and subject also to the right of said Ann E. J. Cruit, to receive during her life one-half of the net rents, revenues and income derived from said real estate as hereinbefore decreed, under the provision of said last will and testament."

Trustees were appointed under the will and they were—

> "authorized and directed to let and lease and manage or convey, under the direction of this court, any and all of said real estate devised by said last will and testament of said Robert Cruit, deceased, and mentioned in the amended bill of complaint, and also to collect, receive and receipt for all of the rents, revenues and income arising from and out of said real estate and after setting aside monthly as near as possible the then proportionate share and amount necessary to meet the current taxes against all of said real estate, the current monthly proportionate share of insurance, repairs and incidental expenses, all of which shall be paid in due course, shall each month distribute and pay the net amount remaining, in equal shares as follows: One-half of said net amount to the said defendant, Ann E. J. Cruit, during her life only; and the other one-half thereof to the said plaintiffs, Kate Dean Owen, and her heirs or assigns, and Jessie Owen Cugle, and her heirs or assigns, and the defendant, Evanina F. Mackall, and her heirs or assigns, that is to say: One-third thereof to each; and after the death of the said Ann E. J. Cruit, then to pay all of said rents, revenues and income to the said remaindermen, Kate Dean Owen, Jesse Owen Cugle and Evanina F. Mackall, or their respective heirs or assigns, until conveyance of said real estate by said trustees to said remaindermen, under the direction and order of this court."

It was further provided:

> "That the said defendant, Ann E. J. Cruit, forthwith account to the said trustees for one-half of all the rents, revenues, and income heretofore collected and received by her from said real estate devised by the said last will and testament of the said Robert Cruit, deceased, since, from and after the death of the said Catherine E. Owen, to wit: from the fourteenth (14th) day of May, nineteen

hundred and one (1901); and she is hereby restrained and enjoined from further collecting and receiving the said rents, revenues, and income."

And, also—

"That the said defendant, American National Bank, pay to the said trustees hereby appointed, the money now on deposit with it, and all accumulated interest thereon, arising from the premises known as No. 610, Fourteenth street, N. W., the said amount when received by the said trustees to be forthwith paid to the said plaintiffs, Kate Dean Owen and Jessie Owen Cugle, and the defendant, Evanina F. Mackall, in equal shares, that is to say: one-third thereof to each, less proper charges, allowances, commissions, and expenses."

And further:

"This decree now passed shall not affect the decree heretofore passed by this court in equity cause No. 21,996, in which Ann E. J. Cruit is complainant and Catherine E. Owen and others are defendants, a copy of which last-mentioned decree is attached to the amended bill of complaint as Exhibit R. C., No. 2, including that part of said decree which provides that the said Ann E. J. Cruit 'shall, at her pleasure during her natural life, remain in the sole undisturbed possession of premises No. 1409 F street N. W., in the city of Washington, District of Columbia, where she now resides, paying for the use and occupation thereof from the death of the said Susan Cruit at the rate of thirty-seven 50-100 ($37.50) dollars monthly to the trustees hereby appointed for the sole use of the defendant, Catherine E. Owen, so long as said Catherine lives and said occupation of said complainant continues, the said $37.50 being at the rate of $75.00 per month, the rental value thereof, the other one-half share belonging to complainant,' the said Ann E. J. Cruit. The costs of this suit to be paid by the defendant, Ann E. J. Cruit."

Assignment of Errors.

I.

The court below erred by its decree that under the provisions of the will of Robert Cruit the said Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall were and are from the death of Catherine E. Owen entitled to receive one-half of the net rents, revenues, and income arising from and out of the real estate, devised by said last will and testament, and in not decreeing that the appellant was entitled to the whole of said rents, revenues, and income.

II.

The court below erred in not construing said will so that from and after the death of her sister, Catherine E. Owen, the appellant became entitled to receive no more than one-half of the said net rents, revenues, and income.

III.

The court below erred in its decree by placing the share and estate of the appellant in said real estate in the hands of trustees as in said decree provided and in its injunction against the appellant as in said decree contained.

IV.

The court below erred in requiring the appellant in this cause to account for and pay one-half of the rents which she may have collected since the death of Catherine E. Owen, prior to the appointment of said trustees, to them or to any person, and in distributing said rents as provided in said decree.

ARGUMENT.

First and Second Assignment of Error.

There are no circumstances shown to exist *aluinde* the will which will materially aid in its construction. It was executed in 1858, and was probably drawn by Wm. Redin, a well-known lawyer of ability, who is a witness to it.

It is phrased in techenical language aptly used without plain explanation that the words used are intended to be taken in any other than their true legal sense.

These terms deal with a passive trust; they speak with appropriate legal phrase of "sole and *separate* benefit, free from the control of the husband," etc., of an equitable separate estate of a married woman, and they express survivorship benefits for his daughters. The words "respective," "share and share alike," and others indicate a technical grasp on judicial decisions defining and applying those terms under like circumstances to those surrounding the testator as indicated in his will. The testator, therefore, had an intention which is to be ascertained by construing his will in harmony with the meaning of the technical words whereby he has manifested it.

> " When, however, a particular expression in a will has received a definite meaning, by express adjudication, such definite meaning must be adhered to, for the sake of uniformity of decision, and of security in the disposal of landed property," per Patterson, J., in Lambert *vs.* Paine, 3 Cranch 134.
>
> "When a testator uses technical words, or words which have received a settled legal sense, courts are bound to say *prima facie*, that he understood the meaning of them, and others are not to be substituted unless by express words, or from the context; or by unavoidable and necessary con-

struction it plainly appears that it was intended that the words should be construed or used otherwise, or unless it becomes necessary to do so in order to make sense of the will." Kean's Lessee *vs.* Hoffecker, 29 Am. Dec., 342.

Testator gave certain estate to his sisters P and M "for the term of their natural lives," and provided that "after the decease of both of my said sisters," a part should go to relatives and residue to an orphan asylum.

Held, survivor took the use of the whole estate, and not of a half only.

Glover *vs.* Stilson, 56 Conn., 316.

A testatrix in her will gave to a trustee named, "income to be paid equally to my brother and my sister during their natural lives, and at their death, the principal I give, to my nephews and nieces then surviving."

The brother died after the testatrix and left the sister surviving. Held, that the whole income of the property was payable thereafter to the sister until her death, until which time the gift over in remainder to the nephews and nieces was not to take effect."

Somig *vs.* Coolidge, 99 Mass. 191.

The will gave premises to three daughters and to their heirs of their bodies, RESPECTIVELY, AS TENANTS IN COMMON.

Wherever it appears to be the intention of a testator that the whole of his estate shall go over together, upon the failure of issue of more than two tenants is common, cross-remainders shall be implied between them in the meantime in order to effectuate that intent.

Georges *vs.* Webb, 1 Taunton, 234.

The testator gave the residue of his real and personal estate to trustees, in trust to sell and apply the interest,

proceeds, and profits thereof from time to time, to the use of his grandchildren, Francis Armstrong, Charlotte Armstrong, Rebecca Armstrong, and Mary Armstrong EQUALLY BETWEEN THEM, SHARE AND SHARE ALIKE, for and during THEIR SEVERAL AND RESPECTIVE NATURAL LIVES; and from and immediately after the decease of the survivor of them, in trust to pay and apply the *principal* money, TO AND AMONG all and every the children of his said granddaughters, equally to be divided between them, share and share alike.

Two of the granddaughters were now dead, leaving children. The question was what should become of the interest which the two deceased granddaughters took, until the death of the survivor. The children of the deceased grandchildren claim them, their mothers being the tenants in common, therefore, there being no survivorship. But Lord Chancellor (Thurlow) said, that though the words "equally to be divided" and "share and share alike" were, in general, construed in a will, to create a tenancy in common; yet, where the contract shows a joint tenancy to be intended the words, shall be construed accordingly; and, that, in this case, it was evident that the interest was to be divided among four, while four were alive; among three, while three were alive; and nothing was to go the children, while any one of their mothers was living; and declared the whole interest to belong to the two living granddaughters, by survivorship.

Armstrong *vs.* Eldridge, 3 Bro. C. C. 215; 29 Eng. Repts. 497.

Testator gave TO THE CHILDREN of Mr. John Glass, deceased, and the children of Mrs. Lyon, deceased, the interest of £1,500 for life TO BE EQUALLY DIVIDED BETWEEN THEM, and at THEIR *decease* the same to

be divided between the grandchildren of each Mr. Glass and Mrs. Lyon. John Glass died in the lifetime of the testator leaving no children but leaving at the decease of the testator five grandchildren, Mrs. Lyon died in the lifetime of testator leaving three children. Held, that children of Mrs. Lyon shall take the whole interest NOTHING PASSING TO THE GRANDCHILDREN UNTIL THE DEATH OF ALL.

Malcolm *vs.* Martin, 3 Bro. C. C., 50; 29 Eng. Rep., 402.

W. L. devised as follows:

"I hereby desire my executor to invest all my estate that may be left so that the interest shall be paid to my daughters, Sarah J. Lazier and Louisa R. Lazier, during their lifetime, or as long as they remain single, and at THEIR DEATH or marriage, I hereby desire that amount shall be equally divided among all my children. Held, that said estate was not distributable so long as EITHER Sarah J. Lazier or Louisa R. Lazier were in life and remained single, and that, said Louisa R. having died unmarried, said Sarah J. was entitled to the interest on assets as long as she lived and remained single."

Lazier *vs.* Lazier, 35 W. Va. 567.

Where a testator in his will devises certain land to his two daughters for their natural lives, and after their death to THEIR lawful children forever, if they shall have any; and further provides that if both said daughters die childless, then the land shall go to the testator's grandson, his heirs, and assigns forever; Held, that the daughters take as tenants in common for life, with cross-remainder for life necessarily implied between them.

Smith *vs.* Usher, 108 Ga. 231.

The meaning of the testator is plain that his *daughters* shall take the whole income, including the last surviving daughter, irrespective of any technical language.

The will provides for survivorship for life in the clause:

> "And from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her, or their parent was entitled. And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner and for the same estate and pass on her or their death as her or their original shares or share."

No share could "pass" if it did not exist, hence there must be survivorship.

Now, if there were a tenancy in common the share of the unmarried daughters would not have survived. To create survivorship a joint tenancy is required, and, therefore, the testator designed such a tenancy.

Third and Fourth Assignments of Error.

The rule is that the extent of the trustee's title depends more on the requirement of the trust than on the terms of its grant.

Poor *vs.* Considine, 6 Wall., 458.

Young *vs.* Bradley, 101 U. S., 782, 787.

The first trust declared is that in favor of the testator's wife (Record, page 3):

> "to permit *her* to receive and take the whole income thereof after paying taxes, repairs and insurance, and to apply and dispose of such net income, as *she my said wife may think proper.*"

This is purely a passive trust, for the trustee is given no duty to perform whatever.

In Poor *vs.* Considine (supra), this court said:

> "1. The trustees were to permit John M. Barr to enjoy the premises and receive the rents, issues and profits during his life.
>
> If John M. Barr should die leaving issue, and his wife Maria should survive him, then they were to permit her, during her life, to enjoy the possession and profits of the property."

A drier trust could not have been created. The duties of the trustees were wholly passive. They were authorized to do no act.

Indeed it would seem that no chancery trust ever existed as to the widow of the testator; that her life estate was untrammelled by any control of the trustees; and that at most the trustee held a dry legal title.

Reference is made to this trust simply to show that no active duties were primarily imposed on the trustee and that no argument can properly be made that such active duties continued after the death of the testator's widow. No trust exists as to the parties to this cause.

Where the testatrix devised an estate to a trustee to hold for her single daughters and pay the income during their lives, free from the debts of any husband they may have or take, etc., the trust for their separate use fell, there being no coverture when the will took effect.

Yarnall's Appeal, 70 Pa., 335.

An active trust for coverture, there being no *immediate* marriage contemplated can not take effect because there is no object to accomplish for the benefit of the *cestui que trust*.

Ogden's Appeal, 70 Pa., 501.
Williams' Appeals, 83 Pa., 390.

"If the gift be made for her sale and separate use, without more, she has, during coverture, an alienable estate independent of her husband. If the gift be made for her sale and separate use, without power to alienate, she has, during the coverture, the present enjoyment of an unalienable estate, independent of her husband. In either of these cases she has when discovert a power of alienation; the restraint is annexed to the separate estate only, and the separate estate has its existence, only during coverture; whilst the woman is discovert, the separate estate, whether modified by restraint or not, is suspended and has no operation, though it is capable of arising upon the happening of a marriage."

Tullett *vs.* Armstrong, 1 Beav., 32, 33.

Alvey, J., said in Cooney *vs.* Woodburn, 33 Md., 326:

"The separate estate, the mere creature of a court of equity, is allowed for the benefit and protection of the wife against the improvidence and misfortunes of the husband, and consequently it has its existence and operation *only during the period of coverture;* and whilst the legatee in this case remained discovert the separate estate was dormant and without effect, though it was capable of arising and did arise upon the happening of the marriage contemplated by the will; and upon the termination of the coverture by the death of the wife, such separate estate became absolutely void."

Cited Tullett *vs.* Armstrong, 1 Beav., 1, same case on appeal, 4 Myl. & Cr., 397.

Schouler Domestic Relations, secs. 107–127.

Therefore, that part of the decree which requires the appellant to account to the *trustees* appointed by the court for one-half of the rents and profits received after the death of Catherine E. Owen is erroneous for the reason that there was no trust in existence. If the

appellant is accountable at all she is solely accountable to the appellees.

If the appellant is accountable either to the trustees or the appellees, then he is not accountable for the farm income. Her answer is not in issue, and it states that the net produce was divided until one of the appellees (the only one residing in this District) refused to receive the same; that the appellees have never been excluded from the farm, and no demand has been made on appellant to rent it.

That the answer must be taken as true:

Gettings *vs.* Burch, 9 Cranch, 372.
Leeds *vs.* Marine Ins. Co., 2 Wheat., 380.
Banks *vs.* Manchester, 128 U. S., 244.
Bohrer *vs.* Otterback, 2 App. D. C., 78.
Brick Co. *vs.* Trott, 16 App. D. C., 293.
Wagenhurst *vs.* Wineland, 20 App. D. C., 85.

Besides if the appellant who has not excluded the appellees, and who is not then bailiff, nor under any agreement to account to them, nor their trustee, has received an excess of her share of the rents she is not liable to account therefor to the appellees, even if the bill be not multifarious.

A tenant in common in possession under the mistaken idea that he is entitled to the whole interest is not liable to account for the use thereof, where there is no exclusion or claim made upon him to protect the other's rights.

Sailer *vs.* Sailer, 41 N. J. Eq., 398.

The decree of the Court of Appeals should be reversed.

Respectfully submitted,

EDWARD H. THOMAS,
For Appellant.

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IN THE

Supreme Court of the United States.

No. 51.

ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLEES.

CHAPIN BROWN,
J. P. EARNEST,
For Appellees.

LAW REPORTER PRINTING CO., WASHINGTON, D. C.

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ANN E. J. CRUIT, APPELLANT,

vs.

KATE DEAN OWEN ET AL.

BRIEF FOR APPELLEES.

The statement of the material facts involved in this appeal are briefly but sufficiently stated in the amended bill of complaint contained in the printed record at pages 1 to 7, and the material facts are admitted by the answer of the appellant (printed Rec., pp. 12, etc.) and need not now be repeated, but will be more particularly referred to hereinafter. A previous bill of complaint filed in this cause below was demurred to by the appellant (defendant below), but the demurrer was withdrawn by leave of the court at the time of the hearing of the same. The amended bill was then filed and was duly answered by all of the defendants and issue joined, and after some testimony was taken, but which sheds no light upon the questions involved in this appeal, the court below, upon final hearing, passed the decree appealed from (printed Rec., pp. 48, etc.).

The principal question before the court is the meaning and proper construction of the will of the late Robert Cruit.

The question of jurisdiction at first raised by the demurrer of the appellant, Ann E. J. Cruit, has been eliminated by the withdrawal of that demurrer, under leave of the court below, and the filing of answers and joinder of issue.

The Contention of the Appellees.

First, it is plain that the testator intended to, and did in fact, dispose of his whole estate by his will.

Second, that the testator gave to his daughters only *life* interests in his real estate; that is, portions of the *net* income arising from the estate during their respective lives only.

Third, that the testator gave to his grandchildren the fee simple title in remainder of all his real estate.

Fourth, that the testator created a trust estate to so continue and be managed by a trustee until the death of all his daughters.

(1). As to the first proposition above stated there can be no doubt. The testator says (printed record, bottom of p. 2):

> "And all the rest, residue and remainder of my estate, real, personal and mixed, whatsoever and wheresoever situated, I give, devise and bequeath unto my dear daughter, Susan Cruit, her heirs, executors and administrators upon the following trusts, to wit."

The testator devised and bequeathed his whole estate.

> Smith *vs.* Bell, 6 Pet., 68; Law Ed. 8, 322.
> Given *vs.* Hilton, 95 U. S., 591; Law Ed. Bk. 24, 458.

In the next above cited case the construction of the will of the late John P. Hilton, of New York, was involved. The language used by the testator in the Hilton

case was similar to the language above quoted, and in construing such language this court said in the Hilton case, speaking through Mr. Justice Strong (at p. 594):

> "The law prefers a construction which will prevent a partial intestacy to one that will permit it, if such a construction may reasonably be given (citing Vernon *vs.* Vernon, 53 N. Y., 351); and certainly when, as in this case, the intent to make a complete disposition of all the testator's property is manifest throughout his will, its provisions should be so construed, if they reasonably can be, as to carry into effect his general intent."

(2). The daughters of the testator, Robert Cruit, under the plain language of the will took life interests only in his real estate. The language used is (printed record, p. 3)—

> "in trust, as to my real estate for my dear daughters . . . for and during *their respective lives*. . . . And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister *for life* equally."

Even if the language were not so strong and so plain in giving the daughters only a life estate, yet there being no words of limitation to the devise to them they would take an estate for life only.

Jarman on Wills, star page 1131.

Wright *vs.* Page, 10 Wheat., 204; Law Ed. 6, 303.

King *vs.* Ackerman, 2 Black., 408; Law Ed. 17, 292.

In the last above cited case this court, through Mr. Justice Story, said (bottom p. 227):

> "Where there are no words of limitation to a devise, the general rule of law is, that the devisee takes an estate for life only, unless from the language there used, or from other parts of the will, there is a plain intention to give a larger estate."

(3). It is equally clear from the language used in the will that the grandchildren took the fee simple title in remainder in all the real estate. The language used is (printed record, p. 3):

> "And from and after their death in trust for the child or children of each of my said daughters then living *in fee simple.*"

It is only in reference to the estate, which the grandchildren take under the will, that the testator uses the words "fee simple." At the time of the making and execution of his will by Robert Cruit, and at the time of his death, his daughter, Catherine E. Owen, was married and had children living, who were grandchildren of the testator, Robert Cruit, and who are still living and appellees in this suit, and under the plain language of the will and of the adjudged cases, the fee simple title of all the real estate devised by the will vested in them in remainder, at the death of the testator, subject to be opened to let in any after-born children of any of the daughters of the testator.

McArthur *vs.* Scott, 113 U. S., 340; Law Ed. 28, 1015.

Croxall *vs.* Sherrerd, 5 Wall., 268; Law Ed. 18, 572.

Poor *vs.* Considine, 6 Wall., 458; Law Ed. 18, 869.

Daniel *vs.* Whartenby, 17 Wall., 639; Law Ed. 21, 661.

Cropley *vs.* Cooper, 19 Wall., 167; Law Ed. 22, 109.

In the above-cited case of McArthur *vs.* Scott, 113 U. S., 340, it is held that, under a devise of an estate, legal or equitable, to the testator's *children for life*, and to be divided, upon or after their death, among his *grandchildren in fee*, the grandchildren living at the

death of the testator take a *vested remainder* at once, *subject to open* and let in after-born grandchildren, although the number of grandchildren who will take and, consequently, the proportional share of each, can not, of course, be ascertained until the determination of the particular estate by the death of the parents.

The above construction, as asked by the appellees, needs no other authorities to sustain it than those above cited. But yet the rules of construction, as laid down by the text writers, of certain expressions used in wills and deeds, all bear out and uniformly sustain the above construction asked and contended for by the appellees.

First, it is said by Jarman:

> "It seems, therefore, that, although words as they stand are not absolutely senseless or contradictory, *transportation will be made*, if it be required to effectuate the intention clearly expressed or indicated by the context," and citing and explaining at length the transportation made in the case of Eden *vs.* Wilson, 1 Ex. 772; 14 Q. B. 256; 4 H. L. Ca. 257.
>
> 1 Jarman on Wills, star p. 468.
>
> See, also, as to the *Transportation of Words and Causes*, 1 Jarman on Wills, star p. 465.

Applying then the next above well settled rule of construction to the will in question, it is plain that the following words used in the will, namely: "After paying taxes, repairs, and insurance," should be transposed and should follow immediately after the words "upon the following trusts, to wit," so that, without taking from or adding any word, to the will, the whole will should read as follows:

And all the rest, residue, and remainder of my estate, real, personal, and mixed, whatsoever and wheresoever situated, I give, devise, and bequeath unto my dear daughter Susan Cruit, her heirs, executors, and administrators upon the following trusts, to wit, after paying

taxes, repairs, and insurance, in trust for my dear wife Catherine, for and during her life and to permit her to receive and take the whole income thereof and to apply and dispose of such net income as she, my said wife, may think proper, and from and after her decease in trust as to my real estate for my dear daughters, Catherine E., the wife of Samuel Owen; Ann Cruit, Louisa Cruit and herself the said Susan Cruit, equally share and share alike, for and during their respective lives for their own sole and separate benefit, free from the control of the husband of my said daughter Catherine and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not to be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge, and from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her, or their parent was entitled (at the death of such parent), and if any of my said daughters shall die without having been married (and without leaving children by such marriage) her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same manner and for the same estate and pass on her or their death as her or their original shares or share.

. . . . . .

And if my said daughter, Susan Cruit, shall die or from any cause should become unable to act in the trust, I direct that a trustee shall be appointed by the Circuit Court *so that the trusts hereby created shall be at all times preserved and carried into effect.*

The Meaning of the Word "THEIR" Used in the Will.

It has been suggested that the phrase "their death" used in the clause "and from and after their death in trust for the child or children of *each* of my said daughters," etc., means the death of the last survivor of the four daughters, in this case the appellant, Ann E. J. Cruit, and that consequently the three remaindermen. the three appellees, are not entitled to any benefit in the estate until the death of the appellant, Ann E. J. Cruit. But the language in the other parts of the will negatives this claim of the appellant, Ann E. J. Cruit (defendant below), especially the language subsequently used, namely, the phrase "*at the death of such parent.*" So that under the rule cited above from Jarman on Wills at star page 465, as to the transportation of words and clauses, and without adding or omitting any word used by the testator, this particular provision of the will reads: "such child or children respectively to take *at the death of such parent* the share to which his, her, or their parent was entitled," etc. And the claim of the appellant, Ann E. J. Cruit (defendant below), that she is entitled to the whole estate until her death, is again conclusively negatived and denied by the further provision of the will in the following language, namely:

> "And if any of my said daughters shall die without having been married her share shall pass to her or their surviving sisters for life equally."

It will be. therefore, conclusively seen from this provision of t[illegible]l that the appellant, Ann E. J. Cruit, could have taken as an implied cross-remainder the share that the daughter, Catherine E. Owen, had at the time of her death, only in case she, Catherine, died without having been married. But such was not the case.

Catherine was married and left children, namely, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall, so that Catherine's share at the time of her death (one-half of the estate) passed in the enjoyment or possession thereof to her three daughters, the three appellees.

But if there had not been any other language in the will to explain this word "their," yet it would necessarily have to be construed as reading or meaning "their respective deaths." A case in point and one cited by all the leading text writers, is the case of Wills *vs.* Wills, L. R. 20, Eq. 342. In this next above cited case the language used was the same in effect as the particular language used in the Cruit will, and the court held that the language, "their death," could not refer to the death of all, but to the death of each *respectively*. That if the testator had meant the death of all he must have said "after the death of the survivor of them;" and this he could not have meant because "the death of the survivor" would not be or mean "their death," but his or her death; that in order to have the language "their death" mean the death of all, the testator must have contemplated the death of all at one and the same time, and this was an unreasonable construction.

See, also, on this question of construction—

1 Jarman on Wills, 6th Am. Ed., by Bigelow, star page 470.

But it is well settled that where, as in this Cruit case the children or other devisees of a testator take for life as *tenants in common*, with remainder over to *"their"* children, the children of the life tenants take *immediately* upon the death of each life tenant, *per stirpes*, that is the share of the parent respectively. There is no exception to this rule.

2 Jarman on Wills, bottom star page 1052, and top of star page 1053.

"This question often arises upon devises or bequests to two or more persons for their lives, with remainder to their children. The conclusion then depends in a great measure upon whether the tenants for life take jointly or as tenants in common. If the latter, then, as the share of any one will, on his decease, go over immediately, without waiting for the other shares, it is probable that the testator intended it to continue separate and distinct from the other shares, and consequently to devolve on the children per stirpes. If otherwise, then it would follow that the different shares would go to different classes of children; for, after the death of the tenant for life who first died, another might have more children, who would be entitled to participate in a share of any tenant for life who died afterwards."

The daughters of Robert Cruit took separate life estates, as *tenants in common* and not as joint tenants.

The language of the will, namely, "equally share and share alike," creates a tenancy in common.

Jarman on Wills, 6 Am. Ed., by Bigelow, star page 1121, et seq.
Schouler on Wills, 3d Ed., sec. 566.
Barribean *vs.* Brunt, 17 How. 43, Law Ed. 15, 34.

Each daughter of Robert Cruit took at the time of his death a *life estate*, as *tenant in common*, with the others in one-fourth each of the real estate, with the possibility of the life estate being increased by express cross-remainders, if any one or more daughters died without leaving a child or children.

McAleer *vs.* Schneider, 2 App. D. C. 461.
Wright *vs.* Page, 10 Wheat. 204, Law Ed. 6, 303.
Kind *vs.* Ackerman, 2 Black, 408, Law Ed. 17, 292.
Jarman on Wills, 6 Am. Ed., by Bigelow, star page 1131, et seq.

Jarman (star page 1131) says:

> "Nothing was better settled than that a devise of messuages, lands, tenements, or hereditaments (not estate), without words of limitation, occurring in a will which was not subject to the statutes of 1 Vict. C. 26, conferred on the devisee an estate for life only."
>
> Citing both English and American cases.

If then, the daughters each took as tenants in common, their shares passed to their children immediately on their respective deaths under this well settled rule of property, and the share of Catherine E. Owen passed to her children, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall, and was not suspended until the death of the appellant, Ann E. J. Cruit.

Below, the principal contention made on behalf of the appellant, was that she was entitled to the whole income under the doctrine of *implied* cross-remainders. But in all the cases cited on behalf of this contention it will be observed that the language used in the wills where the doctrine of *implied* cross-remainders was held to apply, was such as "after the death of *all*," or "after the death of the *survivor*" or "after the death of A. *and* B.," and similar expressions, where the remainderman or remaindermen *could not* take under the plain language and intent of the testator, until the death of *all* of the life tenants. The doctrine or principal in such cases *has* to be applied in order to carry out the *intention* of the testator as gathered by implication from all the provisions of the will. But this doctrine or principle is never applied when it would manifestly defeat the intention plainly expressed as in the case now under consideration. And it has also been held, " that cross-remainders could

not be *implied* where there were *express* cross-limitations among the devisees in tail in certain events."

Jarman on Wills, star p. 1553; citing Clache's case Dy. 330, b.

A case not decided by an appellate court, but which, nevertheless, is of weight in the consideration of the questions now under discussion, as having involved the proper construction of the will of the said testator, Robert Cruit, deceased, is the case of Great Falls and Dominion Ry. Co. *vs.* Catherine E. Owen and others, decided by the County Court of Alexandria County, Virginia. Certified copies of all of the proceedings had therein and the decision of the court thereon are attached to this brief as an appendix. This case necessarily involved the proper construction of the will of Robert Cruit, deceased, and in that case the court of Alexandria County took the same view and decreed the same construction as the court below took in the present case. All of the parties interested, including the present appellant, were before the court of Alexandria County, Virginia. The case referred to was decided since the present suit was instituted in this District.

The next question to be determined is:

"Is this at the present time a trust estate?"

We again refer to the authorities above cited, that the intention of the testator should govern, if such intention does not controvert any fixed rule of law. Let us then first examine the will to see what the plain intention of the testator was.

It is apparent that the testator, Robert Cruit, intended that there should, at all times, be a trustee of

his estate under his will, until all the trusts created by his will should have been carried out. The language of his will on this point is:

> "And if my said daughter, Susan Cruit, now deceased, should die or from any cause should become unable *to act in the trust*, I direct that *a trustee shall* be appointed by the circuit court so that the trusts hereby created shall be at all times preserved and carried into effect" (Printed Record at bottom of page 3).

It will, therefore, be seen that the testator not only required that there should continue to be a trustee, but he also required that the court should appoint such trustee. It will be noted further that he did not designate any other daughter to act after the death or refusal of the said Susan T. Cruit, now deceased. It must be presumed that he had good and sufficient reasons for making this omission and provision and that his intention as expressed should be carried out. The reasons therefor appear in the record and will be referred to and pointed out in oral argument.

That there is just as much a necessity of a trustee of the estate under the will *at the present time* as there was *immediately after the death of the testator, Robert Cruit*, there can be no doubt. He intended that it should be a trust estate until all of the trusts created should be "carried into effect," as above set forth. Have, then, all of the trusts been "carried into effect?" It will be seen by an examination of the will, that the real estate was to be held *in trust* for the four daughters of the testator, "for and during *their respective lives.*" That is, the daughters, including the defendant, Ann E. J. Cruit, were given only a *life estate*, but with the further provision that "if any of my said daughters shall die without having been married her share *shall* pass to her or their surviving sisters or sister *for life equally;*

and upon *her* or their death the same *shall vest* in *her* or their child or children in *fee simple.*" There is a clear distinction made by the testator between the character of the life estates of the daughters, which life estates are made trust estates, and the estates of the grandchildren which are made estates in fee simple. It will be noted, as alleged in the bill of complaint, that two of the daughters died "without having been married," and by general acquiescence with the plain provisions of the will, their shares passed to the said Catherine E. Owen, now deceased, and the said appellant, Ann E. J. Cruit, so that *the whole equitable estate* thus passed to the said Catherine E. Owen and the said Ann E. J. Cruit for life; that is, one-half thereof to said Catherine E. Owen and one-half thereof to the said Ann E. J. Cruit. But the said Catherine E. Owen did not die without having been married, and did not die without having and leaving children, but left surviving her her said children, the appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall; so that, under the plain provisions of the will, the *one-half* share of the whole estate did "vest" "in fee simple" (using the language of the will) in the three appellees, Kate Dean Owen, Jessie Owen Cugle, and Evanina F. Mackall; and who now hold the equitable fee of the whole real estate, subject only to the right of the appellant, Ann E. J. Cruit, to one-half ($\frac{1}{2}$) of the income thereof for her life. But while this equitable fee to the whole of the real estate is now in these three beneficiaries, according to the plain provisions of the will (the words being evidently used to indicate an absolute and unqualified devise to them), yet it is, nevertheless, provided by said will that the said Susan T. Cruit, trustee, or someone appointed by the court in her place, should still hold the said estate in trust, in order to manage the estate, keep up repairs, insurance, etc., and

divide the rents between the life tenants and remaindermen.

There are many things required of a trustee to do, while the whole estate is held intact. There are many different pieces and parcels of property under rental, repairs are to be made, tenants obtained, rents collected, taxes paid, insurance kept up, and in the matter of insurance it is doubtful whether the property can be kept properly and legally insured without the appointment of a trustee. In whose name is the property to be insured in order to protect the cestui que trust? A trustee should be under bond to carry out these trusts and duties, and it was evidently the intention of the testator that in case the said Susan T. Cruit, trustee, should die, that the *court* should take charge of the trusts and manage the same by its proper officers or trustees for the benefit of the beneficiaries.

It is, in conclusion of this branch of the case, submitted that this is a case where a trustee is required to be appointed, not only by the ordinary principles of equity, but by the express direction of the testator expressed in his last will and testament, the trusts not having been fully "carried into effect," the appellant, Ann E. J. Cruit, still being entitled during her life to one-half of the net income and revenue of the estate.

But the well-established principles of law in reference to *trust estates* show that this is still a trust estate.

In Hill on Trustees, under the heading "Of the Estate of Trustees," it is said, at star page 232 :

> "So where there is a gift of real estate to trustees, with direction to convey, or *to pay the rents and profits* to certain persons; or to receive the rents and apply them for the maintenance of an individual *during his life;* or to pay an annuity out of the rents *to a person for life;* or *after de-*

ducting rates, *taxes, repairs*, and expenses, to pay every year such clear sum as should remain to A. B.; in all these cases it has been held, that the seisen or possession of the legal estate is requisite for the due performance of the duty imposed on the trustees, and consequently, that the persons to whom use is subsequently given, take only a trust or equitable estate."

Hill on Trustees, star page 232.

In Jarman on Wills, vol. 2, Bigelow's Ed., star page 1137, under heading "Estates of Trustees," it is said:

"Great difficulty arises sometimes, however, in deciding whether the trust is passive, as in the case in Heermans *vs.* Robertson, 64 N. Y., 332. But the rule seems to be that if, though apparently passive, it in reality involves the exercise of some active duty, as where the direction is that the trustee shall permit the beneficiary to take the *net* rents or the *clear* rents the statute is excluded and the trustee takes the legal estate."

Citing Perry, sec. 307; Barker *vs.* Greenwood, 4 Mees. & W. 421; Keene *vs.* Deardon, 8 East. 248; White *vs.* Parker, 1 Bing. N. C. 573.

2 Jarman, notes by Bigelow, p. 290, star p. 1139.

"And where the equitable tenant for life is a *female*, that will be an additional reason for the court to continue the trustees in the possession and control of the estate, with a view to her personal protection in case of her marriage."

Hill on Trustees, star p. 273.

"It has been laid down, that in all these cases the question whether the use with the legal estate is executed in the trustees or not, must depend upon the *intention of the devisor*, as collected from the will. . . .

> "In the cases just considered the intention, that the trustees should take the legal estate, was collected and acted upon by the court from the circumstances and nature of the duties imposed upon them by the testator. Any particular expressions attached by the testator to a devise to trustees, will also be taken into consideration as evidence, from which such intention may be collected."
>
> Hill on Trustees, star p. 234.

The wisdom of the testator in devising his real estate in trust, instead of allowing it to be jointly managed by parties interested, has been shown by subsequent events. Susan T. Cruit, the trustee, took immediate possession of the property after the testator's death, and all of the parties interested recognized it for over forty years as a trust estate. After the death of the trustee, Susan T. Cruit, the appellant, Ann E. J. Cruit, filed her bill in equity in the Supreme Court of the District of Columbia, asking the court to appoint a trustees or trustee of the estate under the provisions of the clause in the will of the testator. The court appointed trustees and defined their duties, as provided in the will of the testator, namely, to collect the income and out of the same pay taxes, repairs, and insurance, and pay the net balance over to the parties then entitled thereto.

It is submitted that such construction of the will by decree in that previous suit is *res judicata* of this particular question.

It is respectfully submitted that the decree below should be affirmed.

CHAPIN BROWN,
J. P. EARNEST,
For Appellees.

APPENDIX.

GREAT FALLS AND OLD DOMINION RAILROAD COMPANY,
1413 G Street N. W., Washington, D. C.

Without further or formal notice I hereby agree that the Commissioners appointed by the County Court of Alexandria County, Virginia, on the motion of the Great Falls and Old Dominion Railroad Company to condemn land shall at the hour of 1 o'clock p. m., on the 24th day of January, 1901, go upon the strip of land which is part of the land known as the Cruitt lands in said Alexandria County, Virginia, in which we have an interest, and which said Company proposes to condemn for its said purposes and fix the amount that should be paid therefor by the said Company and any damages that I may be entitled to receive. But I reserve the right to except and object to the report of the Commissioners when the same is presented to the court, and then to be in the same position with respect to the said report as if notice had been regularly served on me before the Commissioners acted. I make this agreement in order to save the expense and without waiving any of my rights. I authorize the holder of this paper to deliver the same to the Commissioners, and I authorize them to attach it to their report.

Given under our hands this 11th day of January, 1901.

CATHERINE E. OWEN.
EMILY A. J. CRUITT.
ERANINA F. MACKALL.
JAMES McV. MACKALL.
KATE DEAN OWEN.
JESSIE OWEN CUGLE.
CHAS. D. CUGLE.

Witness:
T. W. WIDDICOMBE.

We, Curtis B. Graham, John Slater, J. F. Haney, William S. Reed and H. Clay Jones, commissioners duly appointed and qualified, hereby certify that at 1 o'clock p. m. on the 24th day of January they met together on the land of the heirs of Robert Cruitt which is proposed to be taken by the Great Falls & Old Dominion Railroad Company for its purposes and then and there described to us as follows:

> *Beginning* at a stake on the line of Cruitt and Whallon, it being 203.3 feet distant from a stone on said line, said stone being a corner to Whallon and Clark; thence through the Cruitt land S. 79 degrees .09 of a minute, W. 383.7 feet to a stake; thence S. 84 degrees 39 minutes W. 268.9 feet to a stake; thence S. 68 degrees .09 of a minute W. 615 feet to a stake; thence curving to the right 490.1 feet by an arc of a circle with a radius of 746.8 feet to a stake; thence N. 74 degrees 15 minutes W. 260.1 feet to a stake on the W. line of the Cruitt land; thence along that line N. 21 degrees 40 minutes E. 60.3 feet to a stake; thence through the Cruitt land S. 74 degrees 15 minutes E. 253.9 feet to a stake; thence curving to the left 450.7 feet by an arc of a circle W with a radius of 686.8 feet to a stake; thence N. 68 degrees .09 minute E. 615 feet to a stake; thence curving to to the right 280.8 feet to an arc of a circle with a radius of 1462.7 feet to a stake, thence N. 79 degrees .09 minute E. 396.3 feet to a stake on the line of Cruitt and Whallon; thence along that line S. 1 degree W. 61.2 feet to the beginning, bearings magnetic, being a strip of land 60 feet wide with an average length of 2007.5 feet and containing 2.78 of an acre, as shown by the plat hereto annexed.

And upon a view of the land aforesaid and upon such evidence as we had then before us we ascertained that for the said land and for the damage to the residue of the tract beyond the peculiar benefits to be derived in

respect to such residue from the work to be constructed $300 will be a just compensation.

Given under our hands this 24th day of January, 1901.

CURTIS B. GRAHAM.
JOHN W. SLATER.
J. F. HANEY.
WM. S. REID.
H. CLAY JONES.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., MARCH TERM, 1901.

In the Matter of the Application of the GREAT FALLS & OLD DOMINION RAILROAD COMPANY *to Condemn Land for its Line of Improvement in Alexandria County, Virginia.*

This matter came on this day to be heard upon the report of the commissioners in the case of Catherine E. Owen, Emily A. J. Cruit, Eranina F. Mackall, Jas. McV. Mackall, Kate Dean Owen, Jesse Owen Cugle and Chas. D. Cugle, land owners.

The commissioners having been appointed July 23d, 1900 by an order of this Court and having taken the oath prascribed by law, and it appearing that the President and Directors of the Great Falls and Old Dominion Railroad Company were not and have not been able to agree with the said land owners above named on the terms of purchase of such of the land whereof they are tenants of the freehold as is wanted for the purposes of said Company; and it appearing that notice of the time when the said commissioners met on said land was given said land owners above named as prescribed by law, upon consideration whereof it is ordered that said report be confirmed and recorded and that the Clerk of this Court

do record said report and the accompanying plat in the proper record books of this Court.

And this matter is continued.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., AUGUST TERM, 1903.

THE G. F. & O. D. RY. Co.
vs.
CATHARINE E. OWEN ET AL.

The Great Falls & Old Dominion Railroad Company is hereby authorized to pay into this court the sum of three hundred dollars, the amount ascertained by the commissioners to be paid in the above entitled proceedings; and it is ordered and adjudged, to enable this court to properly dispose of the same, that Harry R. Thomas, who is hereby appointed a special commissioner of this court, shall ascertain what persons are entitled thereto and in what proportions and report at the next term of this court.

COMMISSIONERS OFFICE, ALEX. CO. CT. H.
Sept. 22nd, 1903.

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN, ET AL. } Cond. of land.

To the Hon. J. M. LOVE, *Judge of the County Court of Alexandria Co., Va.*

Pursuant to an order of the County Court of Alexandria County, Va., entered at the August term, thereof whereby I am required to ascertain and report what persons are entitled to receive the fund paid into court in the above entitled cause and in what proportion, your commissioner respectfully reports as follows:

A tract of land of which the piece condemned forms a part was devised by Robert Cruit to one Susan Cruit in trust as will fully appear from the following extract from the will of said Cruit.

> "And all the rest, residue, and remainder of my estate, real, personal, and mixed whatsoever and wheresoever situated, I give, devise, and bequeath unto my dear daughter, Susan Cruit, her heirs, executors, and administrators upon the following trusts, to wit: 'In trust for my dear wife, Catharine, for and during her life and to permit her to receive and take the whole income thereof after paying taxes, repairs, and insurance and to apply and dispose of such net income as my said wife may think proper and from and after her decease, in trust as to my real estate for my dear daughter, Catharine E., the wife of Samuel Owens, Ann Cruit, Louisa Cruit, and herself the said Susan Cruit, equally share and share alike for and during their respective lives for their own sole and separate benefit, free from the control of the husband of my said daughter, Catharine, and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge, and from and after their death in trust for the child or children of each of my said daughters, then living in fee simple, such child or children respectively to take the share to which his or her or their parent was entitled, and if any of my said daughters shall die without having been married her share shall pass to her or their surviving sisters or sister for life equally, and upon her or their death the same shall vest in her or their child or chilren in the same manner and for the same estate, and pass on her or their death as her or their original shares or share.'"

Your commissioner further reports that Susan T. Cruit died unmarried; that Louisa Cruit died unmarried, leaving Catherine E. Owen, who had intermarried with one Sam-

uel Owen and E. A. J. Cruit, called in the will Ann Cruit, and under the terms of the will the whole estate, for life vested in them.

That subsequently about the year 1902, Catharine E. Owen, departed this life leaving surviving her three children as follows: Evania F. Mackall, who has intermarried with one James McV. Mackall, Jesse Owen Cugle who has intermarried with one Charles D. Cugel, and Kate Dean Owen unmarried.

Therefore at this date there are living E. A. J. Cruit who is entitled to a life interest in one-half of the fund, and three children above named who are entitled to receive the other half absolutely as follows:

One-sixth of the said fund to Evania F. Mackall.

One-sixth of said fund to Jessie Owen Cugle.

One-sixth of the said fund to Kate Dean Owen, making one half of the fund.

The above half should be invested so that in accordance with the terms of the will the income therefrom may be paid to the said E. A. J. Cruitt, and the principal distributed under the terms of said will upon the death of the said E. A. J. Cruit, less all costs allowed by law.

There are no liens upon the said land of record.

Respectfully submitted,

Fee $7.50 HARRY R. THOMAS, Special Comr.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA., SEPT. TERM, 1903.

GREAT FALLS & O. D. RY. CO. *vs.* CATHARINE E. OWEN, ET AL. } Condemnation of Land.

This cause coming on to be heard this 6th day of October, 1903, upon the papers heretofore read and upon the report of Special Commissioner H. R. Thomas, filed in this cause, and no exception being made thereto upon argument of counsel, it is adjudged and ordered, that

the said report be and the same is hereby confirmed and the money heretofore paid into Court is ordered to be disbursed and invested in accordance with said report less proper costs and charges.

And this cause is ordered stricken from the docket.

In re condemnation

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN ET AL.

The undersigned, Emily A. J. Cruit, described in the will of Robert Cruit as Ann Cruit, does hereby consent and request that the sum of three hundred ($300) dollars paid into Court in said cause and her share and interest in the same, whatever it may be, be paid and distributed by the Court to her nieces, Evania F. Mackall, Kate Dean Owen, and Jesse Owen Cugle, to whom the undersigned hereby releases all her interest in said fund of three hundred ($300) dollars.

EMILY A. J. CRUIT. [SEAL].

October 29, 1903.

Witness:

H. R. THOMAS,

HENRY CROCKER.

IN THE COUNTY COURT OF ALEXANDRIA COUNTY, VA.

NOVEMBER TERM, 1903.

G. F. & O. D. R. R. Co.
vs.
CATHARINE E. OWEN ET AL.

It appearing to the Court from a paper filed in this cause that E. A. J. Cruit has relinquished all claim upon the fund paid into court in the above case, to the remainderman the clerk is directed to pay the said money, in accordance therewith.

A Copy. Teste: GEO. H. RUCKER,
Clerk.

Authentication of Record.

Clerk's Certificate.

CLERK'S OFFICE, COUNTY COURT OF THE COUNTY OF ALEXANDRIA, VA.:

I, George H. Rucker, Clerk of the said Court, do hereby certify that the writings annexed to this Certificate are true copies of originals on file and of record in said office; and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this seventh day of December, 1903.

[SEAL] GEO. H. RUCKER, *Clerk.*

Judge's Certificate.

I, J. M. Love, Judge of said Court, do certify the foregoing attestation by Geo. H. Rucker, Clerk of the said Court, to be in due form.

Witness my hand and seal this 9th day of December, 1903.

J. M. LOVE, *Judge.* [SEAL].

Clerk's Certificate to Judge's Official Character.

I, Geo. H. Rucker, Clerk of said court, hereby certify that J. M. Love, whose genuine signature is here subscribed to the following certificate, was, at the time of signing and attesting the same, Judge of said court, duly commissioned and qualified.

Witness my hand and the seal of said Court this 10th day of December, 1903.

[SEAL] GEO. H. RUCKER, *Clerk.*

Supreme Court of the United States.

No. 51.—October Term, 1906.

Ann E. J. Cruit, Appellant, vs. Kate Dean Owen and Jessie Owen Cugle. } Appeal from the Court of Appeals of the District of Columbia.

[December 3, 1906.]

Mr. Justice McKenna delivered the opinion of the Court.

This suit involves the construction of the will of Robert Cruit, deceased, and, as dependent thereon, the liability of appellant to account to the appellees for the rents of certain real estate located in the city of Washington and in the State of Virginia. Decree in the Supreme Court passed for appellees, which was affirmed by the Court of Appeals. (25 App. Cases D. C. 514.)

The will was executed September 1, 1858, and was duly admitted to probate.* The testator left surviving him a wife and four daughters,

* This is the last will and testament of me Robert Cruit of the city of Washington in the District of Columbia.

First I give to my two nephews Edwin Cruit the son of George, and Henry the son of John L. Cruit, the legacy of one hundred dollars, to each of them, to be paid as soon after my death as may be. And all the rest residue and remainder of my estate, real, personal and mixed, whatsoever and whersoever situated, I give devise and bequeath unto my dear daughter Susan Cruit her heirs executors and administrators upon the following trusts to wit In trust for my dear wife Catherine for and during her life, and to permit her to receive and take the whole income thereof after paying taxes repairs and insurance, and to apply and dispose of such net income as she my said wife may think proper and from and after her decease, in trust, as to my real estate for my dear daughters Catherine E. the wife of Samuel Owens, Ann Cruit, Louisa Cruit, and herself the said Susan Cruit, equally share and share alike, for and during their respective lives, for their own sole and separate benefit, free from the control of the husband of my said daughter Catherine and any husband or husbands she or my said other daughters or any of them may hereafter happen to marry, and not to be liable in any way for the debts of any such husbands, the receipts of my said daughters alone being a valid discharge And from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her or their parent was entitled And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally; and upon her or their death the same shall vest in her or their child or children in the same

Catherine E., then the wife of Samuel Owen, Susan, Ann, (appellant,) and Louisa. The widow of the deceased died May 13, 1876; Louisa died January 2, 1876, Susan died December 31, 1900, and Catherine E. Owen died May 14, 1901. Susan and Louisa never married, nor has Ann up to the present time. Catherine E. Owen left surviving her three daughters, Evania F. Mackall and the appellees, Kate D. Owen and Jessie Owen Cugle. The property produces an income of $11,000 or $12,000.

The question in the case is whether appellant succeeded to the whole estate upon the death of Catherine E. Owen, or whether the children of the latter, appellees, were the successors of their mother.

The will gives small legacies to two nephews, and disposes of "all the rest and residue and remainder of the testator's estate to Susan Cruit in trust (1) for his wife for and during her life, and to permit her to take and receive the whole income thereof; (2) in trust, as to testator's real estate, to his daughters equally, share and share alike, for and during their respective lives, . . . and from and after their death in trust for the child or children of each of my said daughters, then alive, in fee simple, such child or children, respectively, to take the share to which his, her or their parent was entitled. And if any of my said daughters shall die without having been married, her share shall pass to her or their surviving sisters or sister for life equally, and upon her or their death the same shall vest in her or their child or children in the same manner and for the same estate and pass on her or their death, as her or their original share or shares."

We do not think it is difficult to discern the intention of the testator. There is very little ambiguity in the will. If ambiguity exist it is in the pronoun "their" in the provision "and from and after their death in trust for the child or children of each of my said daughters then living in fee simple, such child or children respectively to take the share to which his, her or their parent was entitled." It is contended by appellant that it is manifest from these words and others in the will that it was drawn by a skillful hand to create a joint tenancy in the daughters of the testator, and cases are cited in which wills containing such words have been construed,

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manner, and for the same estate and pass on her or their death, as her or their original shares or share And as to my personal property, also given in trust as above expressed, I direct that the same shall, after the death of my said wife, be divided equally among all my said children, Catherine, Susan, Ann and Louisa share and share alike, and I accordingly give the same to them as aforesaid for their own sole and separate use

And lastly I appoint my said daughter Susan Cruit sole executrix of this my last will and testament. And if my said daughter shall die or from any cause should become unable to act in the trust, I direct, that a trustee shall be appointed by the Circuit Court so that the trusts hereby created shall be at all times preserved and carried into effect

it is contended, as giving such effect. We might review these cases and those cited in opposition by appellees if the will in controversy were less clear in its meaning. Provision for his daughters and equality between them were clear and definite in the mind of the testator. One daughter was married and that the others might be was contemplated, and that children might result therefrom. This idea is especially prominent and is carefully expressed and provision is made for such children. The contention of appellant militates against this idea. It would leave grandchildren unprovided for. If such had been the intention of the testator, we think, he would have explicitly expressed it. It was not so natural an intention as the other. It is not the first impression of the will, and can only be made out by rigidly giving plurality to the pronoun "their" in the provision "and from and after *their* death in trust for the child or children of each of my said daughters, then living, in fee simple." But the word is qualified and made several by what precedes it. The devise is to his daughters "for and during *their respective* lives." It is qualified also by what follows it. One of the daughters of the testator was married, the others were not, and might not be, and anticipating this possibility the testator provided that if any of his daughters should die without having been married her share should pass to the survivors. In other words, it was only upon the death of a daughter "without having been married" (and without issue possibly), that her share was to pass to her sisters or sister. We also agree with the courts below that the trust continues.

The concluding paragraph of the will is:

"And lastly I appoint my said daughter Susan Cruit sole executrix of this my last will and testament. And if my said daughter shall die or from any cause should become unable to act in the trust, I direct that a trustee shall be appointed by the Circuit Court so that the trusts hereby created shall be at all times preserved and carried into effect."

Decree affirmed.

True copy.

Test:

Clerk Supreme Court U. S.